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International Court of Justice

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OFFICIAL TRANSCRIPT OF THE INTERNATIONAL MILITARY TRIBUNAL IN THE MATTER OF THE UNITED STATES OF AMERICA, THE FRENCH REPUBLIC, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, AND THE UNION OF SOVIET SOCIALIST REPUBLICS AGAINST HERMAN WILHELM GOERING ET AL, DEFENDANTS, SITTING AT NURNBERG, GERMANY, ON 3 JULY 1946, 1000-1700, LORD JUSTICE LAWRENCE, PRESIDING.

THE PRESIDENT: Has Dr. Bergold asked any of the defendants' counsel to represent him ?

(No response)

Has the Marshal been able to get in touch with Dr. Bergold ?

THE MARSHAL: No, Sir.

DR. STAHMER: Mr. President, Dr. Bergold had been advised yesterday that his presence would be required in the courtroom today. As far as I have heard -- and I have only heard this, however -- the General Secretary also got in touch with him regarding this matter. I am sorry I cannot tell you any more about that. As far as I know, he did not ask anyone to represent him in Court today.

THE PRESIDENT: Thank you, Dr. Stahmer.

DR. STAHMER: Mr. President, I shall look into this matter immediately, to see whether he has arrived or whether I can contact him.

THE PRESIDENT: Dr. Stahmer, I think the best course would be for the Tribunal to consider the various applications with reference to interrogatorie and documents, which I think you and other counsel have got that you wish to offer in evidence. The Tribunal will then examine these witnesses if Dr. Bergold is not here by that time, and they will of course expect him to be here if it is possible. Perhaps you will communicate with him, and the Marshal should also communicate with Dr. Bergold.

DR. STAHMER: Yes.

THE MARSHAL: Yes, Sir.

DR. JAHRREISS: Mr. President, I have learned that the son of Dr. Bergol returned yesterday, unexpectedly and suddenly, from a prisoner of war camp. Therefore, Dr. Bergold traveled to his home, a little bit outside of Nurnberg I asked his secretary to go to Dr. Bergold's home, and I assume he will be here within half an hour at the most.

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THE PRESIDENT: Dr. Stahmer, you have some interrogatories, I think, which you want to offer in evidence, have you not ?

DR. STAHMER (Counsel for defendant Goering): Yes, sir.

At the end of my presentation I still had some interrogatories outstanding which had not arrived at that time.

First of all, I shall turn to the interrogatory deposed by Kammhuber, who was a General in the Air Force. He submitted an organizational study for 1950, which was completed on the 2nd of May, 1938. He was questioned about the purpose and significance of this study. In this interrogatory he stated that this was just a sketch which was based on theoretical assumptions. Then there was a second part to this sketch, which gave the deadline of 1942, and the solution for 1938. This was a positive proposal or suggestion for the organization of the Luftwaffe, the Air Force.

This study was compiled by the author on his own; the witness does not know whether it was actually submitted to Goering at any time. He does not consider it probable, but he does assume that he did suggest the positive organizational plan to Goering.

This interrogatory will be designated Goering Exhibit No. 54. I should like to submit this to the High Tribunal at this time.

I have another interrogatory which I should like to usbmit, which originates from Colonel General Kurt Student. This deals with the air attack on Rotterdam in May of 1940. It is an explanation of that fact.

THE PRESIDENT: Have you got copies of these interrogatories ? We have got this one you are now offering of Student, but we haven't got the one of Kammhuber.

DR. STAHMER: Mr. President, I submitted this material to the Translation Department and I was told that the translations had been completed. I had given this material to the Translation Department. I shall look into the matter and see whether anything has been done with it. At any rate, I did submit the originals to the Translation Department.

THE PRESIDENT: Yes; the Tribunal will expect you to look into it, then.

As to this one of Student, has that been applied for and granted ? It isn't on my list.

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DR. STAHMER: Yes, Mr. President, it has been granted, and the prosecution has submitted a counter-interrogatory to this one.

THE PRESIDENT: Very well.

DR. STAHMER: If I am not mistaken, this interrogatory of Student's was granted me on the 14th of February.

Student deals with the air attack on Rotterdam, which took place in May of 1940. He gives the necessary explanation as to how it came about that during capitulation negotiations bombs were still being dropped on Rotterdam. I believe I do not need to refer to this interrogatory in detail, but the situation was such that capitulation negotiations were in progress. An air attack had been planned, but the squadron which had been deployed could not be advised in time by wireless. The ground troops gave off signals, which the air squadron did not recognize.

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THE PRESIDENT: It appears to cover the same ground as has already been introduced in evidence; does it not?

DR. STAHMER: It has been dealt with in the examination, yes, that is correct, Mr. President.

THE PRESIDENT: Then it should not be read under any circumstances now.

DR. STAHMER: Then I shall submit this document --

THE PRESIDENT: In evidence. I mean, you need not read it in detail.

DR. STAHMER: Very well, Mr. President.

This shall have exhibit number 53.

Then, Mr. President, I have another interrogatory which I should like to submit, deposed by a general of the air forces, Koller. It shall be assigned exhibit number 55.

Mr. President, I ask the indulgence and the permission of the High Tribunal to read these questions, for there is a special significance connected with the testimony given by this witness as it relates to the defendant in this proceeding.

"Question 1: Did the former Reich Marshal Goering at any time issue an order that enemy fliers who had been shot down should be given over to the police or that they should be shot without a trial, or legal proceedings?

"Answer: As far as I know, no. Such an order's being issued by the Reich Marshal is not known to me, in any event.

"Question 2: Did the former Reich Marshal Goering participate in the formulation of an order on the basis of which all of the British flying officers who escaped from Stalag 3 at Sagan in March, 1944, were shot by the police or SD?

"Answer: General Korten told me that the Luftwaffe, the air force -- meaning the Reich Marshal and himself -- did not participate in the issuing of this order.

"Question 3: Did the former Reich Marshal Goering learn of the fact contained in question 2 after these decrees given by Hitler had been carried out? Did he learn about it only then?

"Answer: General Korten told me that he and the Reich Marshal only had knowledge of this subsequently.

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"Question 4: On what day was this order issued by Hitler?

"Answer: Not known.

"Question 5: On what day, or on what days, was this order carried out?

"Answer: Not known.

"Question 6: Do you know whether the former Reich Marshal Goering opposed the shooting of these fifty British Air Force officers very stronly, or very intensely?

"Answer: General Korten told me that the Reich Marshal had been very much upset and very indignant about this shooting.

"Question 7: Dp you have any knowledge about the fact of whether the former Reich Marshal Goering and his deputies in the air force, the Luftwaffe, the chief of the general staff repeatedly protested with Hitler against the proceedings which were to be taken against the enemy 'terror' fliers who had been shot down?

"Answer: According to statements which General Korten made to me in June of 1944, that is correct. I remember that at a later time it was reported to me that the Reich Marshal complained to the Fuehrer on one occasion about the steps being taken by Party organizations and individuals among the population against so-called 'terror' fliers, the reason for this having been that our own air crews had suffered.

"In March of 1945, he very strongly and intensely turned down the suggestion, or proposal, that all enemy crews which were shot down and which would be shot down in the future and captured be turned over to the SD.

"Replying to questions 1 through 7, I should like to state in a supplementary fashion, generally, in the time concerned I was chief of staff of the Luftwaffe operational staff. In February, 1944, the Fuehrer headquarters was transferred, and the OKW was transferred, the Reich Marshal with his personal entourage and the chief of the general staff of the air force, General Korten, together with two or three ordnance officers, to Berchtesgaden. The Fuehrer headquarters transferred all of these to Berchtesgaden.

"As far as the supreme command of the Luftwaffe was concerned -- that is, the entire working staff in East Prussia, Robinson -- I was to remain in Robinson. Because we were counting on the rapid transfer of the Fuehrer headquarters, the entire signal command apparatus for the supplying and taking

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care of the Luftwaffe in these matters, were to be routed via Robinson. And because of the separation which increased and became longer from week to week between the supreme command and the Luftwaffe on one hand and the supreme commanders of the general staff on the other hand, it came about that we in East Prussia did not have knowledge of things which were being handled and disposed of directly at Berchtesgaden.

"This applied to important decisions. Frequently we had no knowledge, and often we were advised very, very late of these matters. Only in the beginning of June -- I believe it was one week after Whitsunday -- I, together with some of my aides, was transferred to Berchtesgaden. And up until that time, beginning in early February, I had been present at Berchtesgaden only once for a conference.

"To questions 2 to 6, dealing with Sagan, concerning the shooting on the instructions of the Fuehrer of the fliers who escaped from Sagan, I heard from General Korten, and I believe from Colonel Christian, simultaneously about this matter. I rather believe I heard about it first from General Korten, who, as far as I recall, on the occasion of one of the daily, rather lengthy evening telephone conversations, advised me on this matter. General Korten on this occasion expressed an adverse view, quite unequivocally, and told me those things which I mentioned in reply to Questions 2, 3, and 6. The conversation must have taken place at the end of March or the beginning of April. However, I cannot fix the exact date.

"Dealing with Questions 1 and 2, concerning the 'terror' fliers, at perhaps the beginning of June, 1944 -- first I thought that it had been July, but I think now that it must have been June -- General Korten advised me that the Fuehrer intended to order that 'terror' fliers be given over to the wrath of the people.

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"We discussed this matter repeatedly and we all agreed in our opposition. As far as the direct attacks by low-flying enemy aircraft was concerned, as directed against civilian population, against women and children, gatherings of civilians, passanger trains in public traffic, hospitals, school children who were out for a walk, our own crews which were parachuting to earth, farmers who were tilling their fields, we considered these attacks of hostile enemy aircraft in low-flying attacks against all of these people cruel and contrary to international law, but in the decree which the Fuehrer intended to issue, we saw no real way and no solution of this very difficult problem. Our reasons, Articles of War, International Law, in opposition to soldierly principles, source of numerous misunderstandings through which these enemy flyers, as well as our own, could come to grief, and ramifications on the --"

THE PRESIDENT: Dr. Stahmer, isn't this really going into argument and not dealing with facts? It really isn't necessary for you to read all this witness' arguments about it. He is not really dealing with facts at all now and it is in detail --

DR. STAHMER: Mr. President, they are these facts which he discussed with General Korten and facts which were decisive for them in rejecting the Fuehrer's order. These were the reasons discussed between him and Korten.

THE PRESIDENT: Some of what you have read no doubt is a matter of fact, but what you are now reading is a matter of argument.

DR. STAHMER: No, Mr. President.

THE PRESIDENT: Dr. Stahmer, surely you can summarize the rest of this.

DR. STAHMER: Mr. President, this document is of such great importance to the Defendant because this document deals with just those questions concerning points with which he is accused and which are very relevant.

THE PRESIDENT: You have been reading it and so far as it is statements of fact, it seems to me that there is some excuse for reading it in detail, but when you come to matters of argument, it seems to me there is no excuse for reading it because argument by a particularwitness is not really relevant for the Tribunal's consideration at all. Summarize the argument, if you like. I mean, you have read the factual part. Summarize the rest and maybe you can tell us , if you like, what the argument is.

DR. STAHMER: Very well, Mr. President. General Korten further stated

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that all of the documents which are important to the question of terror flyers and the shooting of Air Force officers, after looking over them he arrived at the conclusion that the contents of these documents is proof of the fact that OKW as well as the Reichsmarshal opposed these steps and did everything within their power to prevent such a decision as had been intended by Hitler being realized and put into effect. Specifically, he points out that in one of these letters there is a marginal note to the effect that from the Supreme Commander of the Air Force there was no reply, and he concludes from that that the Reichsmarshal personally fought against any conclusive treatment of this matter.

Then there is a further incident dealt with in Question 8: "Did the Fuehrer, on the occasion of the situation discussion, in the presence of all participants, in an excited manner and tone, accuse the Luftwaffe that the German Air Force had made a coward's agreement with the Allied Air Forces?" This applies to Question 5.

"Answer: Perhaps in the first half of March of 1945, Bormann sent the Fuehrer a note taken from the Allied Press -- it had been a reporter's article and the sense of this note was that the crew of an American fighting plane, which just a little bit prior had been shot down over Germany, had been picked up by American troops. Its crew had testified that undignified persons of the population had threatened them with death and in all probability they would have been lynched if it hadn't been German soldiers who had liberated them and protected them. Bormann, in a few words, called Hitler's attention specifically to the fact that this confirmed the fact that German soldiers, in cases of that nature, were taking steps against their own population; and he concluded his remarks approximately as follows: "'My Fuehrer, that is the way your orders are being followed and carried out.' Thereupon, all of these participants of the situation report listened to a rather excited statement by the Fuehrer, and among other things the Fuehrer complained, saying: 'The reason why my orders are not being carried through is the cowardice of the Air Force, because the officers of the Luftwaffe are cowards and they are afraid that something might happen to them some day. The entire thing is nothing but an agreement between my Luftwaffe and the English and American flyers.' I reported on this

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to the Reichsmarshal. Whether Hitler made the same utterance to the Reichsmarshal personally, that I am not able to say, but I consider this quite probable, because in cases of this kind, especially as applied to the Air Force, repeated himself in choice phrases."

"Question: On what day did this discussion take place?"

"Answer: I cannot fix the date."

Now we come to Question 10: "The Fuehrer repeatedly ordered the former Reichsmarshal to determine the name of that officer of the Luftwaffe who, in May of 1944 protected from the population an Allied flyer who had been shot down, but despite repeated inquiries on the part of the Fuehrer the Reichsmarshal gave no instructions to determine the name of this officer or to make the name known to the Fuehrer."

He says he cannot tell from his own experience; he had a report only that an officer of the Luftwaffe and an Ortsgruppenleiter had tried to use their influence on behalf of this American crew; that the Ortsgruppenleiter, who was known, was shot on Hitler's order; that Hitler then demanded to have the name of the Luftwaffe officer given to him; that he had not been told the name, and he said further that if the Reichsmarshal had actually wanted to determine the name of this Luftwaffe officer, he could have done so easily.

"Question 11: Did the Luftwaffe, at the end of the war, receive orders to destroy Dachau with bombs at the approach of the enemy, and in particular, was an order to that effect given by the Gauleiter in Munchen under the cue word "Volke"? Could a Gauleiter give instructions to the Luftwaffe?"

I can summarize the answer by saying, the witness says: "I do not recall any order to that effect," and specifically, he does not know whether the Gauleiter in Munchen was competent to give an order in that respect and he does not believe that a higher officer of the Luftwaffe would have been willing to carry out such a decree.

"Question 12: What do you know about the attitude and the position of the Reichsmarshal and his Luftwaffe in dealing with hostile flyers who had been shot down?"

"Answer: The attitude of the Reichsmarshal always remained correct and chivalrous, quite in line with the Air Force tradition which he gained in the First World War and which he emphasized frequently."

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Of course, in time of indignation about great difficulties in their defense and pressed by the Fuehrer, perhaps on occasion he used harsh words. These words, however, soon were forgotten and I do not know of a single case that such spontaneous utterances made by the Reichsmarshal ever translated themselves into incorrect or harsh measures or oders, dealing with the members of foreign air crews and the attitude and position maintained by the entire Luftwaffe was always correct and humane. To fight in a chivalrous manner, that was a manner of honor with the German flyers --- only a few examples out of many, even though the attacks of enemy aircraft were used against German flyers who were parachuting to earth, these things which were disliked intensely ---

THE PRESIDENT : This is all you are reading now aren't you; and this is all comment, not a statement of fact. It is comment and argument.

DR. STAHMER : Now, Mr. President, he is coming to an example in which he reports about those things.

THE PRESIDENT : Well, let us come to it.

DR. STAHMER : Very well. The use of the sea emergency service meant the entire English Channel, the Bay of Heligoland and Brest, and the Bay of Biscay, and the sea rescue service applied in the same manner to the Germans as well as to the enemy. The rescue service crews in their aircraft and the rescue service couriers in a most tireless manner and in a manner of willingness to sacrifice, tried to assist friend and foe in distress.

THE PRESIDENT : Dr. Stahmer, these weren't particular instances. These weren't particular facts; they are just general statements which are really comments and argument about the chivalry of the German Air Force; That is all.

DR. STAHMER : Mr. President, he is trying to prove in that way.

THE PREDISENT : He doesn't prove it by making a general statement.

DR. STAHMER : No, of course not. He is going over to the point of how many were rescued, how many of those were enemies and how many were their own people. I believe this fact, Mr. President, has significance for the judgment of individual people and of the Luftwaffe.

THE PRESIDENT : As I said just now, if you will get down to the facts, if you have the numbers, well, no doubt that will be a matter of fact.

DR. STAHMER : It amounted to thousands in distress who were rescued at sea --- in various branches of the German Luftwaffe; on the other hand, the

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members of enemy crews -- Without my being able to give exact figures at the moment, I would estimate -- according to my memory I would say that from seventy to eighty percent were saved by the enemy --- a correction --- who were enemies. And in continuing. In the use of our services and through our reconnaissance or other means, crews who were in distress at sea, who were found near hostile coasts or who were beyond the limits of our own sea-air rescue service, people who were in distress who were sighted, immediately the enemy was notified and was asked to rescue. Then there are several questions put by the prosecution. The first question is ---

THE PRESIDENT : It is for the prosecution to read their questions if they want to read them.

DR. STAHMER : I am not interested in these questions, Mr. President; that is quite all right.

SIR DAVID MAXWELL-FYFE : The prosecution do not want the questions read.

THE PRESIDENT : The Tribunal will read them. Do you mean you want to put them in evidence ?

SIR DAVID MAXWELL-FYFE : We will put them in but we do not want them read.

THE PRESIDENT : Right.

DR. STAHMER : I have already stated that this is Goering Exhibit 55. Then I have one more interrogatory, Mr. President.

THE PRESIDENT : Dr. Stahmer, you realize that the Tribunal proposes to read all the evidence and therefore these interrogatories will be read and considered even though they are not read now in open court. You offered them in evidence and the Tribunal will be grateful if you will cut short the reading of these affidavits and interrogatories as far as possible.

DR. STAHMER : I shall be guided accordingly, Mr. President. Now, we are turning to the interrogatory of von Hammerstein which I shall submit as Goering Exhibit No. 52. Mr. President, this interrogatory is not at my disposal in the original. I can only submit it in a form attested to. It has been submitted to the prosecution; it has been translated but it is inaccessible at the moment. I shall assume that I shall find the original very soon and the British prosecution is advised and, as I have stated, this document has been translated.

THE PRESIDENT : You mean the original has been mislaid or something.

DR. STAHMER : It has just been mislaid, Mr. President, and I am unable

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to find it at the moment.

SIR DAVID MAXWELL-FYFE : My Lord, there is no objection to this affidavit. I have no copy in front of them. It is general in its terms and if I may say so, I thought it would serve its purpose admirably if Dr. Stahmer put it in and the Tribunal consider it in due course.

THE PRESIDENT : Yes.

DR. STAHMER : The original will be submitted in the next few days, Mr. President. We are concerned with an interrogatory by the Judge Advocate of the Air Force, General von Hammerstein. For several years he was the Judge Advocate in Chief of the Air Force and in that capacity, once a month he reported to the defendant Goering and in that way he was in a position to judge the attitude and position taken by Goering and in detail he is describing how seriously the defendant Goering considered his duties, as the Judge Advocate in Chief, and he further describes how the Reichsmarshal Goering reserved the right to make decisions in all the more important matters; that he concerned himself with all matters very carefully; that as to the soldiers who were under his command, he was interested in their maintaining morale and discipline and that, specifically, he was careful to see that the soldiers subordinate to him were punished most severly if they acted illegally against the civilian population and especially against the civilian population in the Occupied Countries. Then he further sets forth that the Reichsmarshal Goering, particularly on those occasions demanded severe punishment when acts of violence against women were involved and that in the many decrees he reserved the admiration and respect shown to women as the first duty of a soldier; that in severe cases of rape, he always demanded death as the penalty no matter what the nationality of the woman was and in two cases, for instance, he rescinded the sentences for the sentences had been too lenient and confirmed ---

THE PRESIDENT : What you have said, Dr. Stahmer, has given us the substance of the affidavit. You said that this man was the Judge Advocate for the Air Force and that the law with reference to offenses in the air force was strictly carried out. I am sure that is all you want to say in summarizing it.

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DR. STAHMER: Yes, Mr. President. There was no consideration given to the nationality of the woman involved, and in one case of rape which applied to a Russian woman, he always --

THE PRESIDENT: That is exactly what I have said, that the law was strictly carried out. It is only an illustration of how the law was strictly carried out.

DR. STAHMER: Very well, Mr. President. Mr. President, I shall dispense with all further explanation. I shall submit this document immediately

THE PRESIDENT: Dr. Stahmer, the Tribunal thinks that their time is being wasted, and unless counsel for the defense can do what the Tribunal desires them to do, which is to offer these affidavits and interrogatories in evidence giving the shortest possible summary or description of the affidavits or interrogatories, the Tribunal will have to order that the interrogatories and affidavits shall be simply offered in evidence, and they will hear no comment whatever on them.

The time is approaching immediately when the defense counsel are going to make their speeches, and if there is anything in these affidavits or interrogatories of real importance, they will have the opportunity then of commenting upon it. Also, the Tribunal itself proposed to read not only the oral evidence, but the documentary evidence in this case.

DR. STAHMER: Then, Mr. President, I should like to submit this document under Exhibit No. 53.

THE PRESIDENT: Now then, counsel for the defendant von Ribbentrop. Dr. Horn, you have no affidavits or interrogatories to put in, have you, that have been approved by the Tribunal?

DR. HORN: Mr. President, I ask to be permitted to submit four affidavits to the High Tribunal.

We are concerned here with the affidavit of Legationsrat von Thadden, Legation Councillor in the Information Office No. 14 in the Foreign Office, which was a branch which dealt with the anti-Semitic propaganda in foreign countries.

THE PRESIDENT: Dr. Horn, have you applied for these documents?

DR. HORN: Trhough the General Secretary, in writing, I asked that these affidavits be granted, and this morn ing I received the confirmation

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that these affidavits had been given to the Translation Department and to the Prosecution. Therefore, I beg to submit this document as Ribbentrop Exhibit No. 319.

A further affidavit which I should like to submit, and concerning the submission of which I have asked the General Secretary in writing, is the affidavit of Dr. Werner Best, a former Reich ___ipotentiary.

SIR DAVID MAXWELL FYFE: I am sorry, but as I was telling Dr. Horn, we haven't had copies of these yet; they haven't reached usso far.

THE PRESIDENT: Well, I have before me a list of four affidavits, Thadden, Best, Ribbentrop and Schulze, and it is stated that they are not approved by the Tribunal.

SIR DAVID MAXWELL FYFE: No, My Lord, Dr. Horn mentioned them to me a day or two ago, as to whether I should object to their being translated, and I said no, that I shouldn't object to their being translated. Of course, I haven't had a chance to see them.

THE PRESIDENT: Wouldn't the best course, as they have gone to the Translating Department, be for them to be offered in evidence now, as I understand Dr. Horn is intending to do, subject, of course, to any question which may arise as to their admissibility?

SIR DAVID MAXWELL FYFE: Yes.

THE PRESIDENT: Very well, if you will just give us the numbers then.

DR. HORN: The affidavit proposed by Best I should like to submit as Ribbentrop Exhibit 323. I should like to give a brief explanation for the reason for this affidavit.

In cross examination, my client was confronted with Document 2375-PS. This document is an affidavit of a colonel of the police, Dr. Rudolf Mildner. From this affidavit a passage was quoted to my client dealing with the treatment of Jews in Denmark. I examined this document and have ascertained that two documents bear the number 2375-PS. One document is a statement made by Dr. Mildner which wasnot made under oath. This statement which was not attested to under oath contained that passage which was put up to my client in cross examination. Under the same number there is an affidavit which has been attested and sworn to, deposed by Dr. Mildner also. This passage dealing with the attitude of Ribbentrop on the Jewish question is not found in this affidavit.

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Dr. Best, on the instructions of Ribbentrop, dealt with the Jewish question. I have had this affidavit given to me.

Apart from that, in cross examination my client was confronted with a seriesof documents, on which occasion he could answer but briefly since they were extensive documents which, in the majority, he had not seen in advance. I should like to ask the High Tribunal to permit me a few explanations on behalf of my client, and I should like to submit this document on behalf of my client under Exhibit No. 321 Ribbentrop.

Then, I should like to be permitted to define my attitude on Document TC-75. TC-75 represents a note sent by Ribbentrop to Hitler. This was submitted by the Prosecution in a very abbreviated form. When I had this document given to me in the original for the first time, the photo copy coincided with the copy submitted by the Prosecution. When I had this same exhibit given to me a second time, I received a photostatic copy of nine pages, and in my final argument I should like to refer to this document. Therefore, in order to save the time of the High Tribunal, I ask for permission to submit this complete document TC-75.

I have no further applications, Mr. President.

THE PRESIDENT: Dr. Horn, you didn't give a number to that last affidavit.

DR. HORN: That exhibit will be No. 322, identical to TC-75.

DR. SIEMERS: (Counsel for the defendant Raeder) Mr. President, with the permission of the High Tribunal, I should like to deal with the outstanding points of my presentation of evidence.

First of all we are concerned with the witness who has been granted me by the High Tribunal, General Admiral Boehm. The Tribunal will recall that I called this witness at the end of the presentation of evidence. I checked with Sir Elwyn Jones and Sir David. I have received an affidavit deposed by Boehm at Hamburg, so that I could perhaps dispense with calling him as a witness.

I submitted this affidavit to Sir David and to Mr. Jones, and

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yesterday afternoon, Mr. Jones told me that Sir David and he agreed that they would not cross examine, and at the same time I agreed to not insist on an examination, but rather to be satisfied with the submitting and reading of the affidavit. I believe that Sir David agreed.

I should like to submit this affidavit as Raeder Exhibit 129. This was sworn to on the 13th of June this year at Hamburg.

THE PRESIDENT: It isn't necessary to read it now, is it?

DR. SIEMERS: Mr. President, I should be very grateful if I might be permitted to read this affidavit, for it deals with a portion of evidence which is quite significant. The High Tribunal, I am sure, will recall the fact --

THE PRESIDENT: But I have already told you, Dr. Siemers, that we can't have all these documents read out to us. You can certainly confine yourself to the really important part of it and summarize anything that is really not so important.

DR. SIEMERS: The High Tribunal will agree with me that as far as my other documents are concerned, I read remarkably little. I just wanted to read a part of it. I am concerned only with the fact that the British Delegation, at the close of the cross examination, submitted two very lengthy summaries, GB-464, and GB-465. The se are summaries about the key documents.

THE PRESIDENT: Dr. Siemers, surely you can tell us what the subject matter of the affidavit is. We will then know the general subject matter of it, and then I should have thought you could direct our attention to the particular matters which are of special importance here. It only takes up time if you are going to tell us what the Prosecution have done.

DR. SIEMERS: I beg your pardon, Mr. President, if I have been misunderstood. It was my intention to do just that.

I shall not read from "I" of the affidavit. I shall only summarize it, that it is a discussion between Raeder and AdmiralBoehm, referring to the summer of 1939, on which occasion Boehm told Raeder that he was being careful because of the pol-

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itical developments. He then asked whether Raeder had called Hitler's attention to the great dangers and to the fact that the German Navy would not be in a position to carry on a sea war.

"The Grand Admiral replied to me"-- and this is verbatim-- "that he had done this more than once in the presence of Hitler, and that he had concluded his presentation to Hitler with the fundamental and basic sentence that in such a case the Navy could not do other than to die gloriously".

As to "II" of the affidavit of Admiral Boehm: "on the 22d of October 1939, Hitler made a speech at the Obersalberg to the top leaders of the Wehrmacht. I was present during the entire speech which lasted two to two and a half hours. The speech was delivered in the office of Hitler".

I am now omitting the next few points and continue:

"The speech was submitted as Raeder Exhibit No.27 to the High Tribunal, and I set it down with great exactitude, and I can state under oath that the speech was delivered in the way in which I have set it down. I can specifically confirm that all important thoughts and words are contained in the presentation as I have set it forth.

"The versions submitted by the Prosecution, Documents 798 and 1040-PS, have been submitted to me by Dr. Siemers. I have compared the various versions".

Now I am skipping a paragraph:

"I decalre undereoath that parts of the speech as shown in this document were not used by Hitler, and parts were used in another sense by Hitler".

As to Document 798-PS, the following pages agree with the version which I have just received, which was submitted by Sir David. I should like to remind the High Tribunal that this is GB-464. In this version you will find the sentence, "Thereafter, we shall discuss military details". Attitude taken: This sentence was not used. Military details did not follow".

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In Document 798-PS , lines 7 to 10, "I made this decision already in spring, but thought that first of all in a few years I should turn against the West, and only thereafter against the East".

Attitude taken: "The version as set down by me, on pages 5 to 8, is absolutely true. That part of the speech saying that Hitler would first of all turn to the West was something that was not used in any event."

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Line 12 to 14:

"First of all I wanted to bring about a working agreement with Poland so that I could first of all fight against the west. In no event did Hitler voice the thought that he wanted to fight against the west."

Now I shall omit the next point and on lines 15 to 18 on page two it says:

"With us the making of decisions is easy. We have nothing to lose, only to gain. Our economic situation, because of our resources, is such that we can last only a few more years. As to the attitude taken here, the summary in my statement, pages 21 to 26 is absolutely correct. Above all --"

THE PRESIDENT: Dr. Siemers, does it not come to this? There are two or three versions of this particular speech and this admiral is saying that his version is correct. That is all it comes to and he does not think the other versions are correct, Well, the Tribunal will no doubt have to compare the three versions and compare it with this affidavit. But what is the purpose or use of reading it to us at this stage I do not know.

DR. SIEMERS: Very well, Mr. President. Thank you very much, Mr. President.

Then I ask that the High Tribunal take official notice of the further statement, as set forth herein. I should like to refer only to the fact that Admiral Boehm expressly confirms that the sentence which has been quoted several times:

"'I am afraid that at the last moment some dirty dog (Schweinehund) will give me an arbitrary possibility.' I want to state under oath that Hitler did not use this sentence."

Referring to document 1014, I should like to refer to a sentence which has been emphasized by the prosecution sic or seven times and I should like to read it.

"The destruction of Poland is in the foreground and the outrage is the doing away of living forces, not the reaching of a certain line."

In this connection Boehm says:

"There was never any talk of any destruction of Poland or of a destruction of the fighting forces. What we did speak about was the breaking down of military forces."

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And I should like to have the Tribunal take judicial notice of these rather carefully set down statements for it seems to me that this matter is important in looking at the evidence presented by the prosecution.

Then under III Admiral Boehm describes that period of time during which he was commanding admiral at Norway. I should like to have the Tribunal take judicial notice of this matter. In this statement we are chiefly concerned with the fight carried on by Boehm and Terboven against the German civilian administration and to come to peace with Norway.

Mr. President, after many weeks finally the interrogatory of Albrecht has reached me in its final form. I have submitted it to the translation department several days ago and have not yet received the translation. This has been granted me and this shall be Raeder Exhibit 128.

I ask that the Tribunal take judicial notice of this interrogatory.

I should like to mention that Admiral Albrecht for many years was one of the closest co-workers of Raeder; that already in 1939, in October, he resigned. He knows the attitude taken by Raeder and he knows the conduct and leadership of the navy at the time before 1933 and up to 1938. He too confirms the fact that Raeder constantly warned Hitler of complications and to avoid them and that Hitler always stated that he had matters under control and that he would not let a war come about.

All other points, I ask Mr. President, that the Tribunal take judicial notice of.

I should like to refer to the following. One interrogatory by Schulze is still outstanding. All my efforts to obtain this interrogatory dates back to March 1946. I have his address. The witness is in retirement. The witness is in Hamburg, Blankenese, and the interrogatory was sent to Hamburg in March.

I should be very grateful to the Tribunal if under the circumstances as I have no facility to expedite this matter, that I be permitted to submit this interrogatory to the Tribunal at a later time. However, I do not know when it will reach me for this interrogatory has inthe meantime been sent to Washington for reasons I do not quite understand but I certainly hope this interrogatory will reach me at some future date.

THE PRESIDENT: Excuse me. What do you mean by it having been sent to Washington? Did you say Washington?

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DR. SIEMERS: The secretary of the secretariat told me this interrogatory had been sent to Washington for the reason that the winess could be found there. However, the witness resides in Hamburg/Blankensee. I am sorry that I have no possibility of usihg my influence at all even though I have tried for three months.

THE PRESIDENT: Well, no doubt the general secretary is making every effort to have the witness found. What are the dates? You say that three months ago you submitted this interrogatory? Was it sent to Hamburg or where was it sent?

Surely, Dr. Siemers, you ought to know. You have been in touch wall these three months with the general secretary and you are stating that he sent it to Washington. You ought to know. Have you given him any address in Hamburg? What is your complaint?

DR. SIEMERS: Mr. President, I was nd complaining. I was just giving you a picture of the facts in order to show why the interrogatory has not been returned and I ask that when the interrogatory reaches me that I may be permitted to submit it then.

THE PRESIDENT: I know you say that but the Tribunal

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wants to know where the interrogatory was first sent and why it was sent to Washington and why it was sent to Hamburg and what you know about the alleged fact that the person who was to make the interrogatory was at Hamburg?

DR. SIEMERS : Mr. President, I am from Hamburg myself and in November of the preceding year I talked with the witness and I gave the address when I put in my application with the general secretary for the first time. Perhaps a misunderstanding arose in some way with the other officer who transmitted the interrogatory. Perhaps they looked for a witness by the name of Schulze in some other place. The name of the Admiral is Otto Schulze and it is quite possible that someone else was looked up.

I personally received only the answer that the witness was being looked for and I, on my part, answered that the witness would not have to be looked for.

MR. DODD: I think the Tribunal might be interested in knowing that Dr. Siemers himself just returned from Hamburg a few days ago and I think he has been there two, three times since he asked for this interrogatory. Now, if he knows where this witness is all he had to do while he was up there was to go to a military government officer, submit his questions, get them answered and bring them back and I think it is a little unfair to blame the general secretary under those circumstances.

DR. SIEMERS: I am exceedingly sorry that Mr. Dodd considers it necessary to blame me in this way. I was told that an interrogatory could not be given to the witness by me. The interrogatory meant for Admiral Albrecht, that interrogatory I brought back with me from Hamburg on the request of the general secretary for the statement of oath had been omitted. It is a matter of course for me to deal and cooperate with the general secretary in matters of this kind. However, I have submitted this interrogatory and I cannot understand how Mr. Dodd could accuse me and blame me when I do not bring the interrogatory back with me.

THE PRESIDENT: This seems to me a waste of time. We had better get a report from the general secretary.

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MR. SIEMERS: Mr. President, I believe that I still have not been understood. I am not accusing anyone. I am just asking for permission that I be permitted to submit my interrogatory subsequently.

THE PRESIDENT: We will consider that. We will not make any decision until we have heard a report from the general secretary.

MR. SIEMERS: Mr. President, then I should like to refer to the fact that two of my applications were granted, which were not carried through completely. One was the application dealing with the files of the British Admiralty, specifically referring to the plans by the Allies to land in Scandanavia and Finland. Purely as a matter of form I should like to say that the answer of the Foreign Office, which is known to the Tribunal, is available and the presentation of these documents has been granted by the Tribunal but the request turned down by the Foreign Office. Since this matter has not been dealt with before I should like to make this clarifying statement.

THE PRESIDENT: The Tribunal, I think, has the communication from the Foreign Office.

DR. SIEMERS: But I did not submit it, Mr. President. Therefore, I did not know what the number would be, what exhibit number it would have amongst the files of the Tribunal. Would it be possible, Mr. President --

THE PRESIDENT: You can give it a number, certainly. Give it whatever number you think right.

DR. SIEMERS: Very well.

THE PRESIDENT: Give it whatever number you think right. What is the number you want?

DR. SIEMERS: May I submit this document as Raeder Exhibit Number 133 either this afternoon or the latest tomorrow morning?

THE PRESIDENT: Yes.

DR. SIEMERS: Then, Mr. President, I had made the request that Hitler's Book " Mein Kampf", the original edition be placed at my disposal. In this case as well, I should like to point out

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as far as I have been advised the general secretary has made every effort, for which I am grateful, but the general secretary has not been successful in providing me with this original first edition.

I should like to refer to the fact that the edition used by the Prosecution is from the year 1933 and therefore it cannot be a basis for the argument voiced by the Prosecution.

THE PRESIDENT: That is a matter of argument.

DR. SIEMERS: Yes indeed.

During my absence four documents were submitted by Sir David Maxwell Fyfe. As far as I was able to ascertain these documents, which all originate with Admiral Assmann, these documents were submitted with the remark that Admiral Assmann belonged to the staff of Grand Admiral Raeder. This is something which has been mentioned several times in preceding records.

Just to clear the record, I should like to clarify this error. Assmann was in a department for historical writings and he was in no way concerned with the staff of Raeder and in this connection it is important --

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THE PRESIDENT: Have you got any evidence of the facts you are stating, or do the Prosecution accept them?

DR. SIEMERS: I believe, Mr. President, that Sir David will not contradict me.

SIR DAVID MAXWELL-FYFE: My Lord, we have had it in evidence and we accept the fact that he was in the Navy Historical Section of the German Admiralty. My Lord, when I said "staff" I was speaking generally. I did not mean the Operations Staff.

THE PRESIDENT: We need not waste further time about that then.

DR. SIEMMERS: I should like to refer to one point, Mr. President, concerning these four documents: D-897, D-881, D-892 a D854. I hope that in this matter as well Sir David will agree wit me. All of the English translation bear the heading "Diary".

SIR DAVID MAXWELL-FYFE: My Lord, it is simply a point of how the compilation of Admiral Assmann should be described. I am quite prepared that it should be described as it is in the original one.

THE PRESIDENT: Well--

SIR DAVID MAXWELL-FYFE: Dr. Siemers objected to its bei described as a "diary" and said that it should have been described as an index. My Lord, I do not mind what it is described as.

THE PRESIDENT: What does it matter? Let's call it an index then. Is that all your point?

DR. SIEMMERS: Mr. President, this is important insofar as here in this Court many diaries have been submitted under the designation of "diary", and these were entries--

THE PRESIDENT: Sir David says that he will withdraw the word "diary" and you may call it anything else you like. It is only a waste of our time to make this sort of technical points. Si David agrees with you, and he has agreed to withdraw the word "diar

DR. SIEMMERS: Yes.

THE PRESIDENT: Very well then. Let's not say anything more about it.

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DR. SIMMERS: I quite agree, Mr. President.

Mr. President, I do not wish to take up the time of the Tribunal with all the other and very numerous errors in translation That is the reason why I did not mention them, especially as they refer to the documents Assmann, and we can see from my final argument how important this matter was, and at the suggestion of the Court, I called the attention of the General Secretary to these matters.

THE PRESIDENT: If there are any errors in translation, that matter can be taken up through the General Secretary with the Translation Department.

Dr. Siemers, it is very improper for Counsel in your position to make statements of that sort, which you have no proof of at all. You know perfectly well that when there have been any alleged mis-translation, the matter has always been referred through the General Secretary to the Translation Department and then they have been corrected, and at this stage of the trial for you to get up and say that there are many mis-translations, without any proof of it at all, simply upon your own word, is a most improper thing for Counsel to do, and that is the view of the Tribunal.

DR. SIEMMERS: Mr. President, I humbly apologize, but I do believe that I did not express myself correctly. I am not voicing an accusation, but in the case of many documents, it is not surprising that these errors did take place. I, myself, make mistakes. I am sorry.

THE PRESIDENT: Everybody makes mistakes, and everybody is capable of having different opinions as to translations, but you and every other member of the Defendants' Counsel know that those mistakes, if they are mistakes, will be corrected, if it is possible, and they know that way that it can be done, and, therefore, as I said before, it is very improper for you to get up and allege that there are a lot of mis-translations. I do not want to hear anything more about it.

THE PRESIDENT : Dr. Nelte, have you any documents that you wish to offer in evidence ?

DR. NELTE (Counsel for defendant Keitel) : Mr. President, in a letter dated the 1st of July, 1946, I had submitted three affidavits, after having previously submitted them to the prosecution. Those three documents will become K-23, K-24 and K-25. I beg the Tribunal to receive them, since the prosecution, as Sir David has told me, does not object to their being offered in evidence.

THE PRESIDENT : Are they in the process of being translated, or have they been translated ?

DR. NELTE : They are in the process of being translated. I have merely submitted the originals to the Tribunal.

THE PRESIDENT : Very well, then, we will receive them in evidence and consider them.

DR. NELTE : Thank you.

THE PRESIDENT : Dr. Kaufmann ?

DR. KAUFMANN (Counsel for defendant Kaltenbrunner) : Mr. President, I have a few interrogatories which have been granted me by the Tribunal. I have the originals here with me; they have been numbered, and I should like to submit them. The Translating Division has informed me that the translations are not yet at the disposal of the Tribunal, but I assume they will be in the hands of the Tribunal in the next two days.

THE PRESIDENT : Yes.

DR. KAUFMANN : I should like to state, in a few short sentences, what the contents of the documents are, if the Tribunal wishes me to do so.

There are three documents which refer to the same subject: The testimony given by the President of the Red Cross at Geneva, Professor Burckhardt; the testimony given by Dr. Bachmann, who was a delegate to the Red Cross; and then there is Dr. Meier's testimony, and he too was an official representative of the Red Cross.

In these documents these named witnesses deal with the discussions during March and April 1945 which they had with the defendant. Also, dealing with this subject, they show that agreements were reached on the strength of these discussions and that these agreements, in turn, led to the fact that thousands of French, Belgian and Dutch, and women and childre, could be returned to thei-

home countries, and also that prisoners of war were discharged as well as the fact that DKD's from concentration camps were allowed to return; that Kaltenbrunner had also given permission for the Jewish camp at Theresienstadt to be visited, and that other camps could be supplied with medical supplies, food, and so on and so forth.

All that is contained in detail in these three documents.

THE PRESIDENT : What numbers are you giving to them ?

DR. KAUFMANN : Professor Burckhardt will be Kaltenbrunner number 3; Dr. Meier and Dr. Bachmann, numbers 4 and 5.

THE PRESIDENT : Yes.

DR. KAUFMANN : A further document is the interrogatory supplied by the former Gauleiter in Upper Austria, Eigruber. That is Kaltenbrunner Exhibit No. 6. Again, I shall only refer to this document which states, among other things, that the concentration camp at Mauthausen had not been created by Kaltenbrunner, as has been alleged by the prosecution, and that he was not responsible for the life there or the entire stay of the internees at the camp. That is stated here in detail and I do not propose to read it.

The next document is the interrogatory of Count von Eberstein, which is Kaltenbrunner No. 7. Again, I shall not read from it, but perhaps I may say, in just one sentence, that this witness is testifying that he knows that the concentration camp at Dachau, or the two auxiliary camps belonging to Dachau, were not, as has been alleged by the prosecution, to be exterminated during the last weeks or months of the war, but that such a plan had been exclusively contemplated by the Gauleiter of Munich, Geiser.

Then there is a further interrogatory, which is the testimony of the witness Waneck. That will be Kaltenbrunner Exhibit No. 8.

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I should like to draw the attention of the Tribunal particularly to this document. It is a large document, and I shall not read from it. However, I believe I can say that this man particularly knew the personality of the defendant and his entire work, as an expert, in the course of many years. This witness has, for years, been an important person in the Foreign Intelligence Servic. He knows Kaltenbrunner's attitude regarding executive questions, and he confirms the fact that Kaltenbrunner had made an agreement with Himmler at the time that he, Himmler, would retain the executive powers whereas Kaltenbrunner would work mostly in the sector of the entire Intelligence Service.

Finally, Mr. President, there are two documents regarding which there has not yet been a discussion. Therefore, first of all, the Tribunal would have to make a decision regarding the relevancy of the documents, and also whether I shall be entitled to submit the documents at all. They are two short letters which I have received.

One is a letter from the Mayor of the town of Dachau, dated the 4th of April, 1946. The Tribunal may possibly remember that during the taking of evidence by the prosecution there was repeate mention of the fact that the population of the vicinity had had knowledge of the deficiencies. This man, who is now employed by the American authorities, confirms his own experience. In my opinion they are a contradiction of the thesis of the prosecution.

Immediately connected with this is the second letter, which is from the well-known clergyman Niemoeller, and which is dated 17 April 1946. Niemoeller had spent some time in Dachau.

MR. DODD: Mr. President, would it not be best if we were hear on the first letter, before the Niemoeller letter is taken up?

We have objected to this Document by the Mayor of Dachau for the reason that it is simply a letter. We have had no opportunity to file any cross-questions or to ask any questions of the man at all. These letters come in here. If we are going to submit all the letters that come in--we have bales of them, actually.

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We do not like to object on purely technical grounds, if there is anything here that would really be helpful to the Tribunal. On the other hand, we do not feel that we should deny ourselves the opportunity to make the entire story clear by cross-questions of some kind.

THE PRESIDENT: That is with reference to Schwalber?

MR. DODD: Yes, sir.

DR. KAUFMANN: I did not quite understand what you said, Mr. President.

THE PRESIDENT: What Mr. Dodd said was that they objected to this document from Schwalber because they have not had any opportunity to put any questions to him, either by way of having him called as a witness or by way of a cross-interrogatory. Therefore, they object to the introduction of the document in its present form.

DR. KAUFMANN: Quite, I see. I know that this is somewhat problematical, but the Tribunal has the possibility of ascertaining the evidence value of the letters according to their own opinion. Perhaps I may submit these two very short documents to the Tribunal fo them to examine. So far as I know, the prosecution know these two documents because they have been in the Translation Division, and some time ago a representative of the prosecution told me that very probably objections would be raised. Therefore, at the beginning, I told the Tribunal that the Tribunal, first of all, would have to make a decision regarding the relevancy of the documents.

THE PRESIDENT: Dr. Kaufmann, the best way will be for the Tribunal to read the document and to consider it. We will do that.

DR. KAUFMANN: Very well, Mr. President. Thank you very much.

MR. DODD: I should also like to indicate to the Tribunal that we take the same position with respect to the Niemoeller letter.

THE PRESIDENT: You consider them both similarly, then ? You are objecting also to the Niemoeller letter ?

MR. DODD: Yes, on the same grounds.

THE PRESIDENT: Very well.

Counsel for Frick.

DR. PANNENBECKER: Mr. President, still outstanding is the submission of the reply to the Messersmith interrogatory. The reply has been received and translated; I believe, however, that the Tribunal probably has not yet received it.

THE PRESIDENT: Can you offer it in evidence and give it a number ?

DR. PANNENBECKER: Yes, sir; I was going to.

THE PRESIDENT: Yes.

DR. PANNENBECKER: But I did not expect that it would be the case today, and therefore I do not have the number which I sahll give to the exhibit. May I, therefore, request that I be permitted to furnish the number later ?

I have it here, Mr. President, and I shall now submit it as Frick Exhibit No. 14. This is the reply to an interrogatory which is worded as was usually the custom with Mr. Messersmith in answer to interrogatories by other defendants, and I shall come to this interrogatory in detail during my final speech. Therefore I need not present it now.

Then there is still outstanding the reply to an interrogatory from Knorad, and I beg to be permitted to submit it as soon as I receive it.

THE PRESIDENT: That has been granted, has it ? And it is now before the witness ?

DR. PANNENBECKER: Yes.

THE PRESIDENT: Very well.

DR. PANNENBECKER: Thank you.

THE PRESIDENT: Dr. Servatius.

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DR. SERVATIUS (Counsel for defendant Sauckel): Mr. President, a few interrogatories are still to be submitted. First of all, I submit Exhibit No. 15 to the Tribunal. That is an interrogatory.

THE PRESIDENT: Whose interrogatory ?

DR. SERVATIUS: Darre, the minister for food and agriculture. This interrogatory deals with matters which have already been the subject of this trial, and I should like to draw your attention to a very few points. There is the question of what was Sauckel's general attitude, particularly toward Himmler's views; and the witness emphasizes that there was considerable controversy between Himmler and Sauckel in this respect. He then mentioned one particular case which he has considered, which was directly under Sauckel's supervision in Thuringia, and he says that the freedom of the workers there was such that they were still hiring themselves out to farmers during the day, which was rather too much. He then talked about a clash between Sauckel and Himmler in the presence of the Fuehrer about the question of treatment, and he says that Himmler had stated, "I come under the Fuehrer only, and for business purposes under the Reich Marshal; and I do not have to justify myself before you".

Then there is another interrogatory from Minister of Labor Seldte, which has been allowed by the Tribunal, which I sahll submit as Exhibit No. 16. I should like to underline a very few points. The witness talks about Sauckel's function and the functions of Dr. Ley, and he says that Sauckel was carrying out the function of the state while Ley was looking out for the social picture, welfare and social supervision.

Then he goes on to talk about control , and he says that the insurance health, and supervision department had existed earlier and had continued to function under the responsibility of the Minister of Labor.

Then comes the interrogatory of Dr. Voss, which I submit as Exhibit No. 17. I shall submit the original later. I am afraid I cannot find it at the moment. This doctor was the medical officer in a camp, and he talks about the conditions in the camp, particularly after air attacks, and about the activities and welfare efforts of the Labor Front. He not only refers to the camps in which he was working but he knows a great deal generally about conditions in other camps.

His statement is a contradiction to the testimony given by Dr. Jaeger. Similarly, the following document, which I shall submit as Exhibit No. 18 and which originates from Dr. Ludwig Scharmann, who served in a different sector, also contains statements of the witness which are similar to the previous one for his sector and contains a contradiction of the testimony given by Dr. Jaeger.

That completes the interrogatories which have been granted me. Now I have a number of documents for which I have applied but about which a decision has not yet been announced. I do not know whether I am now to submit them to the Tribunal. They are mostly laws and decrees and such instructions as I would like to submit in addition to what I have already submitted.

THE PRESIDENT: Yes, Dr. Servatius, the Tribunal would like you to submit them now, because the Tribunal wishes to deal with the evidence on behalf of the defense finally now, today.

DR. SERVATIUS: There is a decree by Sauckel dealing with the return transport of sick foreign workers. It shows that workers who had fallen sick were transported back and that the seal of the Red Cross was attached to the transport. The actual decree is in the official collection of laws and decrees which have already been submitted. I shall ascertain my exhibit number presently. It will be no. 99 in the additional document book.

Then there is Document 100, which comes from the Reich Labor Gazette, 1943, which has already been offered in evidence. This deals with the investigation of sanitary measures introduced in camps, and it deals with the accusations which have been raised with reference to these accommodation problems.

Then there is Document 101 which is a memorandum for French prisoners of war on leave concerning the alleviation of the statute regarding "transformation". I shall also submit it and give the exhibit a number. For the moment it is my document No. 101.

Then come documents 102 and 103. They are both laws contained in the official Reich Law Gazette, and which are German instructions regarding compulsory labor service. It is the emergency services which I submit as Document 102.

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Then there is the complusory labor decree which will be Document 103.

Then the document 4006-PS had revealed to me a number of important instructions, but I am told that the prosecution is going to read them, and therefore I assume that I need not do so.

Then I have received an affidavit from Count Spreti, who, beginning with the Eastern campaign, was active as a recruiting officer in the East. It deals with conditions, and it states particularly that Sauckel's activities have brought about a basic change in the general attitude. It is short, and I consider that it is of particular importance, because up to now no recruiting officer has been heard on the subject.

Then I was proposing to submit document 109, which will be a list --

COLONEL PHILLIMORE: My Lord, with regard to that affidavit, I am told, the prosecution having not seen that at all, that that should be accepted with the same reservations as have been made in the previous cases.

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THE PRESIDENT: Was that affidavit you spoke of by Count von Sprete, S-p-r-e-t-i?

COLONEL PHILLIMORE: Yes, My lord.

DR. SERVATIUS: Then I was going to submit a list of all of Sauckel's decrees as Document 109, so that there will be a general survey of the great attention which is paid to all the small matters, Only the titles will be in that list.

THE PRESIDENT: You didn't give a number to the affidavit of Count von Spreti, Dr. Servatius.

DR. SERVATIUS: It will be given No. 108 in my Document Book and then I shall give it an exhibit number later when I submit the numbers for the other documents.

Then as Documents 110, 111, and 112 --

THE PRESIDENT: Dr. Servatius, aren't you giving your exhibit numbers now?

DR. SERVATIUS: I can't do so at the moment because I haven't got the originals with me and most of these are originals which have been submitted.

THE PRESIDENT: You see, in the case of the Defendant Sauckel, as in the case of every other defendant, the exhibits offered in evidence in his behalf should have a consecutive series of numbers and that is a consecutive series which is settled by the Counsel himself who offers the documents in evidence. It doesn't depend upon whether he has the original before him.

DR. SERVATIUS: In that case, I can give them exhibit numbers. Document 108 will have Exhibit No. 18.

THEPRESIDENT: Which is that?

DR. SERVATIUS: Exhibit No. 18.

THE PRESIDENT: Perhaps the most convenient way would be if you would carefully go through your exhibits and give the list to the General Secretary, giving the exactexhibit number of each document.

DR. SERVATIUS: Very well.

Then Documents 110, 111, and 112 are three laws which dealt with

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the position of the Reich Defense Commissioner who has beenmentioned in connection with manpower, and the Reich Defense Commissioner, of course, is the Gauleiter who has been mentioned during the case of Speer in connection with the armament industry. These are merely the basic laws, so that they are at the disposal of the Tribunal.

After the case of Speer had been heard, I received an affidavit from the witness Hildebrandt, at Stothfang, who had been examined here in Court. It deals with the question of how far Sauckel had to obey Speer's instructions and what the relations were between the two departments. The prosecution haven't yet defined their attitude and I think perhaps it would be best if --

MR. DODD: We will be glad to have this affidavit submitted, Mr. President. We have no objection whateverto it. As a matter of fact, if it wasn't submitted by Dr. Servatius, we intended to offer it ourselves.

THE PRESIDENT: Very well. Of course the Tribunal thinks it is irregular, really, that a witness who has been called and given evidence, has been cross-examined -- has been re-examined and cross-examined by any other counsel for the defense who wants to, that he should be entitled to give any other evidence, but if you are both agreed that is convenient in this case, as a special circumstance we will admit it.

MR. DODD: Mr. President, I of course recognize at once the Court's observation about submitting affidavits of witnesses who have been before the Tribunal. What happened here was that some rather material matters were not gone into when he was here, and I think theTribunal will find them quite helpful in clearing up the situation about Sauckel and Speer with respect to their relative and individual responsibilities for this slave labor program. Other than that, I of course wouldn't urge it at all. I think the Court will find it helpful.

DR. FALECHSNER: Dr. Flaechsner, for Defendant Speer. Mr. President I wouldn't make a formal objection against the admission of such an affidavit if I werenot convinced in this particular case that with the admission of suc an affidavit a series of questions will be opened up which will, in turn, necessitate further arguments. I have only seen the wording

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of this affidavit this morning and I am convinced myself that further investigation of its contents will at least be necessary. I believe, therefore that if this trial is to be shortened, one ought not to depart from the general rule in this existing case either and that affidavits from witnesses who have already appeared before the Tribunal should not be permitted. In this particular case, where there are references to the publications in the affidavit, the case could be made quite clear if these publications were submitted and, therefore, the affidavit is not at all necessary.

THE PRESIDENT : Do you wish to say anything in answer to that objection?

DR. SERVATIUS : Mr. President, this affidavit is, in fact, a supplementation of the instructions contained in Document 4006, which the prosecution are proposing to submit; but I hadn't known this was proposed. We are here concerned, in practice, with a question which was opened up by Speer's examination, namely, the significance of the Ministry of Speer in comparison to the department of Sauckel : Who, of the two, was the more powerful; who could give orders; who had to obey. I think the documents will make that clear.

THE PRESIDENT : Yes, but you and the prosecution had the opportunity of cross examining Speer when he was in the witness box and you could then have elicited anything you wanted to elicit at that time.

DR. SERVATIUS : Yes, only the circumstances were not known to me at that particular moment.

MR. DOOD : Mr. President, I don't wish to press on this at all, and if the Tribunal has any doubt about it at all I will withdraw my position. I thought it might be helpful, but it really isn't important and I think if there is any question about it we might let it go.

THE PRESIDENT : Well, the Tribunal think it is irregular to introduce new evidence by affidavits from a person who has already been called as a witness, and in view of the objection on behalf of the Defendant Speer, the Tribunal cannot accept the evidence.

DR. SERVATIUS : In that case, I will withdraw it.

That completes my statement of evidence. The only thing that is still outstanding is the Witness Letsch' interrogatory, which has been granted, and the interrogatory of the Witness Bachenbach, and I have no hopes of still receiving them.

THE PRESIDENT : Dr. Steinbauer ?

DR. STEINBAUER : Dr. Steinbauer, for Defendant Dr. Seyss-Inquart. Mr. President, at the moment there are four documents which I beg to submit and which I have received through the General Secretary. The Tribunal has allowed them and the prosecution know of them. Unfortunately, however, they have not been completely translated.

The first document contains questions and answers from Director Dirk Hannema, who was a director of the Bovmans Museum at Rotterdam. They pertain to the question of the alleged plundering of art treasures. I shall give this document the number 108. I shall submit the English text and the Dutch original.

The next document is an edition of the Newspaper "Nieuw Rotterdamsche Courant", dated the 17th of May, 1942, of which I have the original and a German translation. It contains a warning regarding the shooting of hostages. This document I shall submit under No. 109 in the original.

The following document is also an edition of the same newspaper; its date is the 10th of August, 1942, and once more it contains an announcement regarding the shooting of hostages. In connection with this document, I should like to draw your attention to the fact that this announcement was due to an order from the Supreme Commander of the Armed Forces in Holland, General Christiansen, and that the Higher SS and Police Leader Rauter has signed it. I shall give it the number 110.

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The next document is one I have only received yesterday from the General Secretariat and is a copy of the interrogatory from the Cavalry Commander Kleffel. During the period from the 27th of March 1945 until the 8th of April 1945, he had been Deputy Comman. of the 25th Army in Holland. He confirmed that the Reich Commissioner Seyss-Inquart had stated in a letter to the Fuehrer that he demanded the stopping of the fighting to prevent the damage being done to the country and also to prevent a famine and castrophy. This document is No. 111 of my document book and these documents had been allowed by the Tribunal. I beg, therefore, to receive them in evidence.

Today, the General Secretary's office has sent me two affidavits; one comes from the former commander of the Defense District of Scheveningen? His name is Erwin Tschoppe. He is submitting an affidavit dealing with the attitude and conduct of the defendant with respect to the evacuation of the Coastal area. Because of the short time at my disposal, I have not yet been able to show this document or the following one to the prosecution but I have already informed the prosecution that these two documents exist.

THE PRESIDENT: Dr. Steinhauer, these documents, I apprehend, have not been shown to the prosecution---

DR. STEINBAUER: No.

THE PRESIDENT: Wait a minute; have not been approved by the Tribunal and one question that arises is: Are they very long? Because I find that the translation division has been overloaded with very long documents.

DR. STEINBAUER: No, it is a very short document, which is important to me, however, because it shows how the defendant acted during that decision and how he took care of the Dutch population.

THE PRESIDENT: If it is short and if you will submit it to the prosecution, then it can be translated and admitted subject to any objection.

DR. STEINBAUER: Yes, sir. The same applies to the following document which I also received today. It is an affidavit of Adalbe

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Joppich. He was the President of the German Supreme Court in the Netherlands and he is making a very brief statement about the position and the attitude of the defendant with regard to legal questions affecting the Dutch population. I should beg the Tribunal that this document should also be admitted in evidence, assuming that again I shall adopt the procedure of submitting a copy of the translation to the prosecution.

THE PRESIDENT: What number did you give.

DR. STEINBAUER: The copy of the document will be 112 and Adalbert Joppich will be 113. Still outstanding are the documents allowed by the Tribunal which are Bolle's affidavit, Dr. Router, Voelkers and Lindhorst-Horman. The General Secretariat and I are trying to obtain these affidavits. Until now, it has only been possible to establish Bolle's residence. Finally, I should request that two applications should be granted, which I have made in writing; one is the obtaining of the membership card in the NSDAP of the defendant, which has been impounded on the occasion of his arrest and which is amongst his personal documents and must be in the custody of the Tribunal or official custody. A few months ago I had made a request to that effect but both parties had apparently lost track of the matter.

THE PRESIDENT: Of course, you don't mean that it is in the custody of the Tribunal; you mean that it is in the custody of the military authorities.

DR. STEINBAUER: Quite right. I meant the prison department, of course.

THE PRESIDENT: Of course, what was the other document?

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COLONEL PHILLIMORE: I don't want totake up your Lordship's time but that membership card, that could have been applied for months ago. It is on the same footing as these documents which counsel has been putting in. We haven't seen them. I don't what this card is going to prove but it is going to be a great deal of trouble to get it here just as these documents are giving a great deal of work to the translation divisior .

THE PRESIDENT: What is the importance of the membership card? Presumably he knows when he became a member. What relevance does the card have on it?

DR. STEINBAUER: It is of importance because according to the war crime laws which have now been published in Austria, all members having a membership number above six and one-half million will not be regarded as the so-called "old fighters" or illegal members. Seyss-Inquart has stated in the witness box --

THE PRESIDENT: That has nothing to do with this Tribunal. It may be relevant in some other proceeding and before some other court but not before this Court.

DR. STEINBAUER: There is a point, that the prosecution had alleged that he had been a member since 1931 and of the NSDAP but, of course, I am not trying to cause any trouble. I only thought that the membership card might be amongst the property which was taken away from the prisoner and that therefore one could have a look.

THE PRESIDENT: Yes. Did he deny that he was a member since 1931?

DR. STEINBAUER: Yes, oh, yes. He states that he hadn't become a member until the 13th of March 1938, formally.

THE PRESIDENT: Oh, yes; formally, I remember, yes; but he had been a member of the Austrian Nazi Party very much longer, if I remember rightly.

MR. DODD: We will agree here and now, Mr. President, that that card showed that he became a member, as far as the card is concerned, on that date. I am sure that is what it will show and if it will help the doctor, we will be glad to agree to that.

THE PRESIDENT: Very well.

DR. STEINBAUER: The last exhibit which I am applying for is the following: During cross examination a document has been submitted, where an

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eighteen-year-old female clerk of the police, by the name of Hildegarde Kunze, is stating that the sterilization of Dutch Jews had been caused. Seyss-Inquart states in this connection that he had never written to the police directly at any time but that he had in three personal letters to Himmler directly objected to the treatment of Jews and that in one of his letters he had mentioned sterilization. This, presumably, was the cause for that witness mentioning it and presumably she gained knowledge of these facts through seeing the original or copy of the letter which Himmler may have passed on to the RSHA. My client has requested me that in this important question, I should make an attempt to obtain permission for these letters to be obtained, these letters which he has written to Himmler, in order to disprove the statement given by witness Hildegarde Kunze, which is implicating. I do not wish to conceal that it will probably be difficult to find these letters amongst the very many documents of the RSHA.

THE PRESIDENT: Have you made your application in writing about this?

DR. STEINBAUER: Yes, I have made a written application.

THE PRESIDENT: Giving the dates when the letters were written?

DR. STEINBAUER: Yes, everything I could ascertain regarding the time and when received and it is contained in my application.

THE PRESIDENT: The Tribunal will consider that but you understand that the work involved in this sort of thing is very great indeed.

DR. STEINBAUER: Mr. President, far be it from me to underestimate the difficulties which are connected with my application. Apart from this, I have no further application I wish to make.

THE PRESIDENT: We will adjourn now.

(A recess was taken until 1400 hours.)

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AFTERNOON SESSION

(The Tribunal reconvened at 1405 hours, 3 July 1946.)

The PRESIDENT: The Tribunal will not sit in open session on Saturday next, nor will it sit in open session on any Saturday in the future unless it gives notice that it is going to do so.

Yes, Dr. Thoma.

DR. THOMA (Counsel for the defendant Rosenberg.) : Mr. President, yesterday I mentioned an affidavit of Dr. Heinz Oeppert, Reichshauptstellenleiter. I have now received this affidavit from Dr. Oeppert, and I have conferred with Mr. Dodd in this connection.

I now beg the permission of the High Tribunal to submit this affidavit. Mr. Dodd has no objections to the submission of this affidavit on my part.

May I read but a brief passage taken from this affidavit, Mr. President ?

THE PRESIDENT : Can you tell us what the affidavit is about ?

DR. THOMA : Yes, Mr. President. Dr. Oeppert had the Office of Ideological Enlightnment for the Plenipotentiary who was charged with the enlightenment and education of the party in ideological matters, and he testified about the activity of this office. In this connection we are almost exclusively concerned with observation of matters and incidents in this sphere.

Any active intervention into the church politics of the state or the party would not have been possible even if they had wished it, for this office had no executive powers of any kind. There were constantly very intense differences between the state and party organizations who participated in this sphere of activity, between the Propaganda Ministry and the Church and the Party and Chancellery. The measures taken against specific clergymen, as far as I know, were taken by the SD or the Gestapo.

I am asking the High Tribunal to take judicial notice of this document. This will be Exhibit No. R-051.

THE PRESIDENT : Is anyone representing Dr. Fritz ?

DR. SCHILF : Dr. Schilf on behalf of Dr. Fritz, who is absent on behalf of the defendant Fritsche.

Mr. President, Dr, Fritz applied in writing last Monday concerning affidavits which are still outstanding, one an affidavit of Clifton Delmar a journalist, and the other an affidavit of His Excellence Feldscher, Ambassador of the Protective Power from Berne. Both of these affidavits have not reached

us, and we are asking the High Tribunal if we may submit and be allowed these documents later.

I have no further comments. No other applications have been made.

THE PRESIDENT : I didn't hear the name of the second one. Was it Feldscher ?

DR. SCHILF : Ambassador Feldscher. He is now at Berne in Switzerland. He was the Ambassador of the Protective Power.

THE PRESIDENT : Have these affidavits been placed before the Prosecution?

DR. SCHILF : No, Mr. President, they have not been submitted to the Prosecution. They have not been received; they have not reached us.

THE PRESIDENT : Are they affidavits or interrogatories ?

DR. SCHILF : They are two interrogatories, Mr. President.

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THE PRESIDENT : I see. Well then, when the interrogatories come back answered, they can be shown to the Prosecution if they want to put in cross interrogatories, and then they can be translated and submitted to the Tribunal.

Dr. Schilf, there was an application -- I am not sure whether it was in writing or whether it was only oral -- with reference to Schoerner and Voss, and one other man, whose names were used in cross-examination by the Prosecution. I think they were affidavits; I am not sure, and there was an oral application, I think, to cross examine those persons. Do you want that to be done, or have you withdrawn that ?

DR. SCHILF : Mr. President, that application has not been withdrawn, but it was put in only as an auxiliary application, to have effect only if the interrogatory notes or records submitted by the Russian Prosecution would not be considered as affidavits, only interrogation records.

Dr. Fritz made application to this effect, that if these three documents were to be used as a basis of evidence, we cannot forego cross examination. There three documents were used in the examination of the defendant Fritsche only in part, and only short passages were submitted to the defendant in his examination in each instance.

THE PRESIDENT : What you want to say is that if the Prosecution don't want to use the whole of those documents, but only the parts which were put to the defendant Fritsche in the course of cross examination, then you don't need to have those persons called for cross examination, but if the Prosecution wish to put in the whole document, then you want to cross examine them. Is that right?

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DR. SCHILF: Mr. President, that is correct.

THE PRESIDENT: Are you meaning that you are asking the Tribunal to strike out the passages in the defendant Fritsche's evidence which deal with these statements or are you merely meaning that if the Prosecution wished to use not only the parts which they have put to the defendant in cross-examination but other parts of the document, that in that event you would like to cross-examine the deponents Voss and Schoerner ?

DR. SCHILF: Mr. President, only in the case of the three interrogatories in toto shall be accepted and considered pieces of evidence, then cross-examination shall take place.

THE PRESIDENT: Yes, then you do mean what I first of all put to you.

Well, perhaps the Prosecution, General Rudenko, could say whether he is wanting to put in the whole document or whether he has put enough of it in

GENERAL RUDENKO: Mr. President, as I have already stated to the Tribunal, when these written statements were submitted and the protocols of the interrogations were written down in accordance with the procedure which is in existence in the Soviet Union, the Prosecution will only use those parts which were read here before the Tribunal and on which defendant Fritsche was cross-examined.

THE PRESIDENT: Very well, then it is not necessary to have those witnesses brought here for cross-examination.

DR. SCHILF: Yes, indeed, Mr. President.

THE PRESIDENT: Then that brings the Tribunal to the end of all the evidence for the Defense, with the exception of two witnesses who are here and to be called on behalf of the defendant Bormann.

DR. FLAECHSNER: Mr. President, on behalf of the defendant Speer may I submit a document which has already been translated and is known to the Prosecution. This is the Fuehrer protocol of 4 January, 1943. This shall have the number Speer Exhibit 35. I had it in the table of contents, where it was included as Exhibit 35 but at that time it had not been translated. May I submit it, therefore, at this time ?

THE PRESIDENT: Yes, certainly.

What I wanted to say was that that concludes the whole of the evidence

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on behalf of the defendants with the exception of interrogatories which have already been granted, the answers to which have not yet been received. Of course, those interrogatories, subject to thier being admissible, will be admitted when the answers are received and that applies also to anything in the shape of an affidavit which has been allowed by the Tribunal but otherwise the evidence for the defendants is now closed with the exception of Dr. Bergold.

DR. SERVATIUS: (Counsel for defendant Sauckel): Mr. President, I have a question regarding the testimony of the witness Walkenhorst in case he is not called as a witness. I have an affidavit at my disposal which I have received and I assume that I may submit this in case this witness is not examined here before the Court. It deals with but a very brief question ; the telephone conversation which Sauckel had regarding the evacuation of the concentration camp Buchenwald and Walkenhorst was the man at the other end of the wire. This is the one question and I have an affidavit as to that.

Of course, if the witness is being questioned here in Court I shall ask him but in case he is not examined here I may use the affidavit.

THE PRESIDENT: You are speaking of Walkenhorst ?

DR. SERVATIUS: Yes, the witness Walkenhorst.

THE PRESIDENT: Well, he is going to be examined now.

DR. SERVATIUS: I hope so, Mr. President.

THE PRESIDENT: Well, I believe he is here.

I have before me a list of supplementary applications but I think that they have all been dealt with in the discussion which we have had during the last two days. If there is any other matter which the defendants' counsel wish to raise they should raise it now.

Well then, I take it then, that as I said, the evidence for the Defense is now concluded, subject to the reception of documents which I may describe as outstanding, either interrogatories or affidavits.

DR. MARX: Mr. President, may I be permitted, please, to introduce three documents with the permission of the Tribunal. We are concerned with the following questions:

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What influence did the paper published by Streicher exercise on the German population. This fact is decisive and how the circulation of this paper increased and it is important to know to what circumstances we can trace back the fact that at a certain period of time there was a marked increase in circulation, which actually did take place.

I set myself this task, that is to learn how the weekly paper, the "Stuermer" did increase its circulation.

THE PRESIDENT: We have already dealt with this application. We have had the application before us and we have considered it and we have refused it.

DR. MARX: Yes, I beg your pardon, Mr. President.

We are concerned here with the following.

Quite accident, by looking at various editions of this newspaper, I ascertained that in the year 1935 a very sudden increase in circulation took place and the Prosecution would like to prove that this increase did not result from within the German people but rather that high Party functionaries and agencies used their influence in bringing about a threefold increase. Of course, it is of essential significance whether a three-fold increase results from a demand by the people or whether it is the result of the German Labor Front using its influence in the person of Dr. Ley and a special edition was given out and through exploiting the huge machinery at the disposal of the Labor Front.

That is something I want to prove and I am of the opinion that it is of extreme significance to the Defense to determine which case applies.

In this direction, Mr. President, I have three pieces of proof or data and with the permission of the Tribunal I shall read a directive and I ask that I be allowed to use this as a piece of evidence from which we can conclude that Dr. Ley as the director of the German Labor Front, gave directives to all agencies of the German Labor Front to disseminate this special edition and to see to it that the greatest possible circulation be brought about amongst all workers and in factories. It is one of the most significant points of the Prosecution, that the German people, through the "Stuemer" and through the defendant Streicher, was influenced in that manner and was later made ready to support those measures in the east, the mass destruction which was carried out in the east.

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Therefore, I ask that this piece of evidence be admitted and that it be declared relevant.

THE PRESIDENT: You said you have got three documents. The first one is a directive.

DR. MARX: Yes, Mr, President.

THE PRESIDENT: What are the other two ?

DR. MARX: One is an excerrt from the newspaper the "Stuermer" in May 1935, edition number 18 and this statement reads as follows:

"Mr. Bernhardt, who fled from Berlin to Paris says under date of 29 Mard 1935, in the Paris dailies, under the heading "Stuermer circulation increases three fold " He says the following: --

"Support is being given by the highest agencies of the Reich as the circulation of the "Stuermer" shows in less than a year the circulation has increased three-fold through the help of the highest party -- "

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THE PRESIDENT: Wait. You have already told us that the circulation of the Stuhrmer went up three fold. It is not necessary to repeat it all again. We only want to know what the documents are. The first one is a directive of Ley. The second one is an issue of the Stuermer. What is the third one?

DR. MARX: The third, Mr. President, is a summary of the circulation from January 1935 until the middle of October 1935, and from this summary we can see that within the period of one year, the circulation increased from 112,000 to 480,000.

THE PRESIDENT: That is sufficient. We do not want to know any more about it.

DR. MARX: Very well, Mr. President. Then, may I be permitted--

COLONEL PHILLIMORE: It is entirely in the hands of the Tribunal, but we should see no objection from the Prosecution point of view admitting these documents. The first would appear to directly link the defendant Streicher with another of the conspirators. It would be a most important document.

THE PRESIDENT: Very well, Dr. Marx. The three documents will be admitted.

DR. MARX: I should like to submit the documents under Exhibit Numbers 19, 20, and 21.

THE PRESIDENT: Very well.

DR. MARX: I beg your pardon, Mr. President. May I make one more remakr? This matter came about in this way and was delayed in this manner, for I personally did not know anything about this. It was only by accident that I heard from the records of the Stuermer, and of my own initiative I considered it to have a probitive value. I himbly beg your pardon for submitting this material at this late date.

DR. SAUTER (Counsel for Defendants Funk and Schirach): Mr. President, I, of course, do not wish to put a further application, but I should like to put a legal question in order to clarify it.

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At this time in the Commissions interrogations are being carried on in order to gather evidence with regard to the organizations. In this connection, witnesses are being interrogated, witnesses whom we here do not know, and documents which we do not know are being submitted in these interrogations. Only in the course of the next few weeks will we of the Defense know the results or the findings of the material gathered in these commissions.

We, the Defense attorneys who are active in this Court, have in mind the following case: It could be, for instance, that one of these defendants in the dock, on the basis of a new witness' statement, could be involved and accused as a member of one of the organizations, or that documents would be submitted, documents to which we, as Defense Counsel for these defendants, have to show our attitude, or use them in refutation.

We are quite agreed that the taking of evidence and the presentation of evidence be concluded here. However, we wish to reserve the right in case of that kind--

THE PRESIDENT: I think you will find when you look carefully at the order which the Tribunal made, that this matter was provided for, and that if there is any matter in the course of the hearing of the case against the organizations which in any way materially or directly affects any of the individual defendants, the Tribunal, of course, has discretion to hear Counsel for that defendant upon the matter, and I think that is specifically dealth with in the order that we have made.

DR. SAUTER: This resolution is known to us, of course, Mr. President, but we just wanted to be clear on this point, that this regulation will be maintained and be in force, even though our presentation of evidence here will be concluded.

THE PRESIDENT: Certainly.

Do the Prosecution wish to make any applications to the Tribunal?

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COLONEL PHILLIMORE: I have eight documents to put in. My Lord, they are documents which it is intended to refer to in the final speech and accordingly I would not propose to do more than just to indicate their nature to the Tribunal and put them in very quickly. I have a list of them which I will hand up first. It may be convenient to see their nature.

THE PRESIDENT: Are they documents which have not yet been offered in evidence?

COLONEL PHILLIMORE: Yes, My Lord; I am offering them in rebuttal.

THE PRESIDENT: You have a list here?

COLONEL PHILLIMORE: Yes, My Lord. My Lord, the first document, 1519-PS--

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THE PRESIDENT: Have they been communicated to the defendants' counsel?

COLONEL PHILLIMORE: No, My Lord; I have copies here.

The first document, 1519-PS, contains orders for the treatment of Soviet prisoners of war. My Lord, that is not strictly offered in rebuttal, but theTribunal has before it a document, EC 338, which was put in as USSR 356. That document consisted of a commentary by Admiral Canaris on these orders, and your Lordship may remember the document. Defendant Keitel had made certain notes on it on which he was cross-examined, the reference in the shorthand notes being pages 7219 to 7223. My Lord, it seems appropriate that the actual orders should be before the Court and not merely the commentary.

My Lord, that will be GB 525, and the Tribunal will see that if it consists of a covering letter from the Defendant Bormann to Gauleiters and Kreisleiters, covering the OKW letter signed by General Reinecke, the head of the Prisoners of War Department, and then there follow the actual regulations.

THE PRESIDENT: Has not this been in before?

COLONEL PHILLIMORE: My Lord, I am told not. What was put in was the commentary on this document which was by Admiral Canaris. It was included in the Keitel document book, but it was not formally put in.

THE PRESIDENT: I see. You mean it will be GB --

COLONEL PHILLIMORE: 525, My Lord.

THE PRESIDENT: Yes.

COLONEL PHILLIMORE: My Lord, the second document, D-912, will be GB 526. This is a series of boradcasts from German stations between 6 September and 22 October 1939, monitored by the British Broadcasting Corporation and dealing with the "Athenia."

My Lord, I offer that document in view of the defendant Raeder's evidence. The Tribunal will remember that, according to him, the article on the 23 October in the Voelkischer Beobachter came as a complete surprise. The referenee in the shorthand notes is page 9832.

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My Lord, it also arises out of the questions put by the Tribunal to the defendant, Fritsche, and it confirms his evidence that broadcasts blaming Mr. Winston Churchill for being responsible for the sinking of the "Athenia" started at the early part of September and went right on through the month. Actually, these broadcasts, the Tribunal will see -- The first one 6 September. I might perhaps one sentence in the second line:

"The German press refutes the accusations of the British press that a German submarine had sunk the 'Athenia'. Churchill, as one of his first actions, ordered the 'Athenia' to be sunk in order to stir up anti-German feeling in the USA."

Then there are similar broadcasts from other stations on that day, again on the 7th, the 11th, the 25th. I have not got the one on the 27th put in by General Rudenko, but there is one by the defendant Fritsche on 1 October, and so on, culminating with a broadcast by Goebbels on the 22nd, the day before the article appeared. My Lord, that will be GB 526.

The next document, 3881-PS, is an extract from the proceedings before the Peoples' Court on 7 and 8 August 1944, when seven defendants were tried for the attempt on Hitler's life. My Lord, I am only putting in a translated extract, but the photostat is in fact complete -- I should have said what is before the Tribunal is on a translation of certain extracts, but the exhibit contains the complete record of the proceedings.

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THE PRESIDENT: Unless we have it translated, we shan't be able to have it in evidence.

COLONEL PHILLIMORE: My Lord, we do not intend to refer to more than the translated excerpt.

THE PRESIDENT: Very well.

COLONEL PHILLIMORE: I only said that for the benefit of defense counsel, who may wish to look elsewhere.

My Lord, I put that in in view of the defendant Jodl's evidence that it was only because British Generals obeyed orders that the German Generals were now being tried. That is page 11043 of the shorthand notes. The nature of the passages is that the President of the People's Court is refusing to accept the defense of superior orders put forward by the defendant. That will be GB-527, My Lord.

The next document is D-181, which I offer as GB-528, which is a letter from a Gauleiter to Gauamtsleiters, Gauinspektors, and Kreisleiters on the subject of the law of hereditary health, and sterilization on the ground of imbecility. It is an important document in connection with the defendant Frick, and I put it in in view of the statements made on his behalf by his counsel at page 8296 of the shorthand notes, My Lord, when he said in effect that Frick had no control over the political police and that Himmler's subordination to him was purely nominal.

My Lord, there are a number of references in the letter to the effect that the decree -- and indeed its administration -- was the responsibility of the defendant Frick.

My Lord, the next document is of a similar nature and I attribute it to the same page of the shorthand notes. It is M-151, and I offer it as GB-529. It consists of three letters on the subject of the murder of mental patients in institutions. The first is dated the 6th of September and is addressed by the supervisor of a sanitorium at Stettin to the Reich Minister of Justice. It sets out the feeling of insecurity in the neighborhood of the sanitorium administered by this inspector, in viewof the number of deaths which are occurring.

The second, dated the 10th, is a latter from the Minister of Justice acknowledging the complaint and saying that it has been passed on to the defendant Frick.

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The third, of the same date, is the Minister's letter to his colleague passing the complaint on to him.

My Lord, the next document is again on the same subject. It is M-152, and I offer it as GB-530. It consists of four letters.

The first, dated the 19th of July, 1940, is addressed to the defendant Frick as Reich Minister of the Interior, by Bishop Wurm, the Provincial Bishop of the Wuerthemberg Evangelical Provincial Church. My Lord, it again sets out the mass of complaints he is receiving, and then goes on to deal with the wickedness of the practice which is apparently going on.

The second letter, dated the 23rd of August, is a letter to the Minister of Justice referring to the letter sent the defendant Frick.

The third, of the 5th of September, is a letter to the defendant Frick reminding him of the previous letter of the 19th of July to which no reply had been received.

Then, on the 6th of September, the next letter is a parallel communication again to the Minister of Justice.

Finally, on the 11th of September, the last page of the document, ther is a note on the Minister of Justice's file indicating that an official of the Ministry had informed the Bishop's Dean, presumably being Komka, that the matter was entirely one for the defendant Frick.

The next document, My Lord, D-455, which I offer as GB-531, is a pamphlet prepared by the German Military Government authorities in Belgium. It comes from the files of the German War Office, the OKH, and it is entitled, "Belgium's Contributions to Germany's War Economy", and it is dated the 1st of March, 1942.

My Lord, I offer it in view of the general evidence that German occupation was benevolent. The Tribunal has heard, again and again, the suggestion that they did a great deal of good to the countries they occupied. This document is a very graphic illustration of the falsity of that evidence out of the mouths of the defense.

If I might take the Tribunal very quickly through it, My Lord:

At page 3 is a chart of the population figures in terms of employees, and it shows that more than half the working population was working for Germany.

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Of the 1,800,000 workers and employees in Belgium, 901,280 were employed with the German armed forces and in the German interests.

My Lord, at page 4 is a comparison between Belgium, Holland and France in terms of percentage of workers employed as slave labor.

My Lord, at page 5 is a statement of the production figures for the Belgian contribution to Germany, and in the 7th line, I think it is, it is summed up: Output to the value of 1.2 million Reichsmarks.

At page 6 there is a comparison between the coal taken from Belgium and the same amount produced in the year in the Ruhr.

At page 8 there is a comparison of iron, with the total amount of iron used in the West Wall.

Page 9 deals with cement; page 10, textiles; and page 11, metals.

There is a statement there which contains a sentence about the summing up of what had been taken out:

"It was possible to achieve these results only by exhausting the last reserves of the country."

At page 12 there is a chart of how the metal collection has affected individuals. It is a comparison between Belgium, Holland and France.

At page 13 there is a statement about the contribution to traffic, and there is a chart on page 14.

At page 15, it appears that the contributions in money exceeded the total earned income of the Belgian workers for the last year.

At page 16, there are figures with regard to the quantity of gold taken for safekeeping in the Reichsbank.

Page 17 deals with shares, a comparison with the total share capital of I. G. Farben, the comparison being seven hundred million Reichsmarks as against the share capital of I. G. Farben of eight hundred million.

Then there is a statement with regard to rations, showing that Germany had imported food into Belgium, but that, despite that, the rationing was the lowest of all Western countries.

And finally, on the last page, there is an indication of the change in the Belgian rations by a comparison between 1938 and under the benevolent rule of the German Military Government in 1941. My Lord, it speaks for itself.

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My Lord, the last document, D-524, is a similar pamphlet referring to France. It comes from the same source, and I offer it as GB-532.

My Lord, owing to a breakdown in electric power, I have not been able to finish photostating the English copies, but I will hand them in, if I may, subsequently. For the moment I will hand up German photostats.

My Lord, I offer it in view of the defendant Sauckel's evidence, at page 10617 of the shorthand notes, where he said that the total slave labor figure was not more than five million. My Lord, at pages 8 and 9 of this document, the Tribunal will see the slave labor position of Germany at the end of 1943, so that to this must be added slave labor drawn in during 1944. My Lord, it amounts to just under seven million, of which 1,462,000 were prisoners of war, so that the figure of slave labor, at that date, was slightly over five million; that is, slave labor excluding prisoners of war was slightly over five million, and to that, as I say, one must add the increase during 1944.

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My Lord, on Page 8 are the figures and comparisons:

Men, civilians, 3,631,000;

Prisoners of War, 1,462,000;

Women, 1,714,000.

Then it is set out how that is divided by countries.

On Page 9 is merely an illustration in color.

My Lord, the rest of the pamphlet merely gives figures illustrative of it. They were taken from France, are very similar to those in the case of Belgium. I would not propose to take the Tribunal through it unless it is desired that I should do so.

I think I gave that a number, GB 532.

My Lord, that is all the documents that I have to offer. I understand myfriend, Mr. Dodd, has some.

MR. JUSTICE JACKSON: May it please the Tribunal; at the time of the cross-examination of the defendant, Hermann Goering, we confronted him with a document, numbered 3787-PS. It was received as U.S.A. Exhibit 782. It was the report of the second meeting of the Reich Defense Council. Goering acknowledged the authenticity of the minutes when they were presented to him in the German text. But the document at that time had not been translated, and consequently it was not possible to read into the record the many parts of that document which we considered important as bearing upon his credibility and testimony, and as bearing upon the denials of many others of the defendants that they knew of the planning of the war and that they participated in it.

I should now like to read for the record part of this which we consider extremely important as rebuttal of testimony received from several of the defendants.

On the face of it it is a letter of transmittal dated the 10th of July, 1939, from the Supreme Command of the Armed Forces, on the subject, "2nd Meeting of the Reich Defense Council."

One hundred copies were prepared, and our copy is the 84th. It is labeled, "Most Secret", and merely transmits in the name of the Chief of the Supreme Command of the Armed Forces, the enclosed document to the following parties, among others. I shall name only the ones to which we

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have attached some importance:

To the Party, the Fuehrer's Deputy, the first copy; to the Chief of theReich Chancellery; to the Ministerpraesident General Field Marshal Goering; to the Reich Air Ministry and the Commander in Chief of the Air Force; to the Foreign Office; to the General Plenipotentiary for Reich Administration, there are nine copies, includingone for the Ministry of the Interior, the Ministry of Justice, the Ministry of Education, the Ministry for Church Affairs, and the Reich Office for Planning.

Copies are also sent to the General Plenipotentiary for Economy, including copies for the Ministry of Economy, the Ministry of Food and Agriculture, the Ministry of Labour, the Chief Forester, and the Commissioner for Price Control; to the Ministry of Finance, the Ministry of Transport, Motor Transport and Roads, and the Ministry of Railways; the Post Ministry; the Ministry of Enlightenment and Propaganda; the Reichsbank Directorate; the General Inspector of German Roads; and to the Armed Forces, including ten copies for the OKH, six copies for the OKM, the Reich Minister for Air and Commander in Chief of the Air Force; the Supreme Command of the Armed Forces.

There is aseries of other copies being enclosed.

The enclosure is a report of the second meeting of the Reich Defense Council held on a date to which we attach importance, the 23rd of June, 1939.

"Place: Large Conference Room of the Reich Air Ministry.

"Commencement: 1110

"Termination: 1355.

"President: Ministerpraesident General Field Marshal Goering.

"Persons present: --"

I shall name only those to which we attach some importance, because the list is very long:

The Fuehrer's Deputy, the Chief of the Reich Chancellery (Dr. Lammers), Reichsministerpraesident General Field Marshal Goering's staff, Secretary of State Koerner, Secretary of State Neumann, Councillor Bergbohm, and several others.

General Plenipotentiary for Reich Administration: Reichsminister Frick, Reichsfuehrer --SS Himmler, General of the Regular Uniformed Police

Daleuge; General Plenipotentiary for Economy: Reichsminister Funk; the Reichsminister of Finance, Krosigk; Minister of Transport; General Inspector of German Roads, Dr. Todt; Supreme Command of the Armed Forces; Generaloberst Keitel, Warlimont; and Generalmajor Thomas.

Supreme Command of the Army, from the General Staff, General of Artillery Halder; Supreme Command of the Navy, Grossadmiral Raeder; Reich Minister for Air: Milch and Bodenschatz.

There were no more witnesses here.

The contents, summarized, I shall not read.

The minutes of the meeting:

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"Ministerpraesident General Field Marshal Goering emphasized, in a preamble that, according to the Fuehrer's wishes, the Reich Defence Council was the determining body in the Reich for all questions of preparation for war. It is to discuss only the most important questions of Reich Defence. They will be worked out by the Reich Defence Committee.

"Meetings of the Reich Defence Council are to be convened only for these d e c i s i o n s which are unavoidable. It is urged that the Departmental Chiefs themselves be present.

"B. DISTRIBUTION OF LABOUR.

"I. The President announced the following directives to govern the distribution and employment of the population in wartime.

"The total strength of the Armed Forces is determined by the Fuehrer. It includes only half the number of those fit and liable for military service. Nevertheless, their disposition will involve difficulties for economy the administration and the whole of the civil sphere.

"When a schedule of manpower is made out, the basis on which the question is to be judged is how the remaining number, after those required for the Armed Forces have been withdrawn, can be most suitably employed.

"Of equal importance to the requirements of the Armed Forces are those of the Armament Industry. It, above all, must be organised in peace-time, materially and as regards personnel, in such a way that its production does not decrease but increases immediately with the outbreak of war.

"The direction of labour to the vital war armament industry and to other civilian requirements is the main task of the General Plenipotentiary for Economy.

"War armament covers not only the works producing war materials, but also those producing synthetic rubber (Buna), armament production tools, hydrogenation works, coal mining etc.

"As a rule, no essential and irreplaceable workers may be taken away from "war decisive" factories, on whose production depends the course of the war, unless they can be replaced.

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"Coal mining is the most urgent work. Every worker who is essential to coal mining is "indispensable".

"Note: Coal mining has even now become the key point of the whole of the armament industry, of communications and of export. If the necessary labour is not made available for it now, the most important part of the export trade, the export of coal, will cease. The purchase of coal in Poland will stop. The correct distribution of labour is determinative. In order to be able to man these key points with the right people, severe demands will shortly be submitted to the Fuehrer which, even in the current mobilisation year, will under certain circumstances lead to an exceptional direction of the war, e.g. to the immobilisation of lorries and to the closing down of unessential factories owing to lack of coal.

"In addition, there is the supplying of Italy and other countries such as Scandinavia with coal (to maintain the German supplies of iron.)"

I shall omit certain parts of the document which do not seem particularly important to our argument and pass to Item 2, page 9 of the English translation:

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"A second category of workers liable for military service will be called up during the war after their replacements have been trained. A decisive role is played by the extensive preliminary training and retraining of workers.

"Preparations must be made for replacing the mass of other workers liable for military service, even by drawing on an increased number of women. There are also disabled servicemen.

"Compulsory work for women in wartime is of decisive importance. It is important to proceed to a great extent with the training of women in war-essential work, as replacements and to augment the number of male workers.

"In order to avoid confusion when mobilisation takes place, persons working in war-essential branches e.g. administration, communications, police, food, will not at first be removed. It is essential to establish the degrees of urgency and the standard of value.

"In the interests of the auxiliary civilian service, provided by every European people to gain and maintain the lead in the decisive initial weeks of a war, efforts must, in this way, be made to ensure by a trustworthy organization, easily understood, that every German in wartime not only possesses his mobilisation orders but has also been thoroughly prepared for his wartime activity. The works must be adapted to receive the replacements and additional workers.

"The General Plenipotentiary for Economy is given the task of settling what work is to be given to prisoners of war, to those in prison, concentration camp and penitentiary.

"According to a statement by the Reichsfuehrer-SS, greater use will be made of the concentration camps in wartime. The 20,000 inmates be employed mainly in workshops inside the concentration camps.

"Secretary of State Reich Minister of Labour Dr. Syrup, made a report on the employment of labour in the event of mobilization and the schedule of manpower for the war."

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This seems a little detailed, but it is, I think, very important, showing the totality of the mobilization planned months before the war started, and indicating, as we shall argue, preparations for a war more extensive than the mere brush with Poland.

"The figures for the schedule of manpower drawn up experimentally, could be only of a preparatory character and merely give certain guiding principles. The basis of a population of 79 million was taken. Of these, 56.5 million are between the ages of 14 and 65. It is also possible to draw upon men over the age of 65 and upon minors of between 13 and 14. Defectives and the infirm must be deducted from the 56.5 million. Most prisoners are already employed in industry. The greates deduction is that of 11 million mothers with children under 14. After these deduction have been made, there remains an employable population of 43.5 million: 26.2 million men, after deducting 7 million members of the Armed Forces: 19.2

17.3 million men, after deducting 250,000 nurses etc: 17.1 for the whole of GermanY's economic and civil life. The President does not consider women over the age of 60 as employable.

8.) The number of workers at present employed and of employees (2/3 of those gainfully employed) distributed over 20 large branches of industry, amounts roughly to the following: 24 million men (excluding 2 million service men), 14 million women.

9.) No information was then available regarding the number which the Armed Forces will take from the individual branches of industry. Therefore an estimate was made of the numbers remaining in the individual branches of industry after 5 million servicemen had been called up.

The President's demand, that the exact number liable to be drawn upon be established, is being complied with. These enquiries are not secret apart from figures given and formations.

I shall skip the next paragraph, 10, as of no importance.

"Apart from the 13.8 million women at present employed a further 3.5 million unemployed women, who are included on the card-index of the population, can be employed.

2 million women would have to be redirected: e.g. a transfer can be made

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to agriculture and to the metal and chemical industry, from the textile, clothing and ceramic industries, from small, trading, insurance and banking businesses and from the number of women in domestic service.

12.) The lack of workers in agriculture, from which about 25% of the physically fit male workers will be withdrawn, must be made up by women (2 in the place of 1 man) and prisoners of war. No foreign workers can be counted on. The Armed Forces are requested to release to a great extent works managers and specialist workers such as milkers, tractor drivers, (35% are still liable for call up).

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"In the agricultural sphere, preparations must also be made to relieve individual employment through help from neighbouring farms, systematic use of all machines and making a store of spare parts available.

"15. The President announced that, in the war, hundreds of thousands of workers from non-war economy concerns in the Protectorate are to be employed under supervision in Germany, particularly in agriculture, and housed together in hutments. General Field Marshal Goering will obtain a decision from the Fuehrer on this matter."

I shall omit No. 16.

"17. If I may say as I offer this, it seems rather detailed as showing the extent of preparation already accomplished at the time in June of 1939.

"The result of the procedure of establishing indispensable and guaranteed workers is at present as follows: Of 1,172,000 applications for indispensability, 727,000 have been approved and 233,000 rejected."

I shall pass to "c" near the bottom of the page: "The orders to supplementary personnel to report for duty are ready and tied up in bundles at the Labour Offices."

The meeting proceeds to consider production premiums in connection with wages and I pass to No. 21, a detail which I offer as indicating that a long war was in anticipation. "When labour is being regrouped, it is important and with specialist workers, essential that the workers are retrained for their work in the new factory, in order to avoid setbacks in the initial months of the war. After a few months have passed, it must be possible to replace most of the specialist workers."

I pass to point "V". "The General Plenipotentiary for Economy, Reich Minister of Economy Funk, stated his opinion of the consequences of the schedule of manpower, from the point of view of the carrying on of industry.

"a. In accordance with the verbal agreements made with the OKW, the regulations regarding indispensable personnel have been laid down, and the certificate of indispensability issued."

I shall pass to point No. 25 on page 15: "In reply to the request by the speaker that when withdrawing workers for the Naval Dockyards, more consideration should be shown for the important sections of industry, parti-

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cularly export and newspaper concerns, the President pointed out the necessity of carrying out the Naval Building Programme as ordered by the Fuehrer, in its entirety."

I pass to the large heading Roman No. VI. "The General Plenipotentiar for Administration, Reich Minister of the Interior, Dr. Frick, dealt with th saving of labour in the public administration.

"The task is primarily a problem of organization. As can be seen from the surveys showing how the authorities, economic and social services are organized, which were submitted to those attending the conference, there are approximately 50 different kinds of officials in the District Administration, each quite independent of the other -- an impossible state of affairs Formerly there were in the State two main divisions, the state Civil Servic and the Wehrmacht. After the seizure of power, the Party and the permanent organizations were added to these, with all their machinery from top to bottom. In this way the number of public posts and officials was increased many times over. This makes public service more difficult.

"Since the war, tasks have increased enormously." The context makes it clear that that is the preceding war. "The organizing of total war naturally requires much more labour, even in the public administration, tha in 1914. But it is an impossibility that this system should have increased its numbers twenty to forty fold, in the lowest grade alone. For this reason, the Reich Ministry of the Interior is striving for coordination of administration."

A small commission was created. I offer Item No. 29 in connection with Goering's testimony that they ceased to function. "Instead of further discussions before the whole assembly, the forming of a small commission wa recommended, which will make definite proposals. Extensive preparatory wor has been undertaken." And a note by the committee that the committee had been functioning.

Point 30. "The President requested that the commission's proposals b submitted. It was an important section of the preparation for war.

Now, I shall pass to the large sub-division "C" which relates to increasing the efficiency of the communications service, starting with the

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receipt of a report from the Army General Staff. "The result of the examination of the work necessary for strategic concentration a year and half ago showed that the transport service could not meet all the demands made on it by the Armed Forces. The Minister of Transport agreed. The 1938 section of the Four Year Programme will presumably be completed in August 1939.

"Shortly after this programme was drawn up, demands were made on the Wehrmacht, which changed completely the usual employment of the Wehrmacht at the beginning of a war. Troops had to be brought to the frontier, in the shortest possible time, in numbers which had until then been completely unforeseen. The Wehrmacht was able to fulfill these demands by means of organizational measures but transport could not.

"In the Transportation sphere Germany is at the moment not ready for war."

I offer the detail which follows, in contradiction of statements repeatedly made by a number of witnesses that the movements of the Wehrmacht in the Rhineland, the Anschluss and all the rest of it, even Czechoslovakia were surprise movements. "In the case of the three operations in 1938/1939 there was no question of an actual strategic concentration. The troops were transported a long time beforehand near to the area of strategic concentration by means of camouflaged measures.

"This stop gap is of no use whatsoever when the time limit connot be laid down and known a long time beforehand, but an unexpected and almost immediate military decision is required instead. According to the present situation, transport is not in a position despite all preparations, to bring up the troops."

"a" is unimportant for my purposes, on page 18.

"b" and "c" represent steps to be taken to meet the deficiency.

On page 19, I shall not bother to read No. 38, showing the preparation of highways from East to West and from North to South.

I read No. 39, if I may: "The President remarked that even in peacetime certain vital supply stores of industry and the armed forces

affirmed that all essential points had been cleared up at this meeting."

The American branch of the prosecution has some additional documents which Mr. Dodd will submit, if it is agreeable to the Tribunal.

THE PRESIDENT: We will adjourn now.

(A recess was taken).

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THE PRESIDENT: Mr. Dodd, you have got some other papers to put in ?

MR. DODD: I would like to offer, Mr. President, Document 406-PS, which is the bulletin of the Reich Minister for Armament and Ammunition, and it is a matter that the Tribunal, in our judgment, may take judicial notice of. It is an official publication but it will be quite helpful in connection with the labor program as between Suackel and Speer and it is offered for that purpose, to clear up some of the coubts that may have arisen after the Speer and Sauckel testimony. I think there is no necessity to read it at all but simply to offer it. It would become USA 902.

Then I would like to offer Document 1452-PS. This is a report of a conference of the chiefs with the Chief of the Department of the Economic Armament office, and I would just like to read a short excerpt from it. It is Document 1452-PS, dated the 24th of March, 1942. It says :"Conference of the Chiefs with Chief of the Department. Report of the Chief of the Department on the conference on the 23rd of March with Milch, Witzell, Leeb, in Minister Speer's office. The Fuehrer looks upon Speer as his principal mouthpiece, his trusted advisor in all economic spheres. Speer is the only one who today can say anything. He can interfere in any department. He already disregards all other departments." And the remainder of the document we do not with to quote and I do not think it is necessary because the text is not changed any by what we have quoted from it. That becomes USA 903.

Now we also have here some photographs, Mr. President, and these are offered with respect to the Defendant Kaltenbrunner. They were turned over to us by our colleagues of the French prosecution. The first one is F-894, which becomes USA-904. That is a picture showing Himmler congratulating someone, Kaltenbrunner immediately to his rear.

THE PRESIDENT: How are they identified ?

MR. DODD: I will submit it -- well, these are all captured documents but the men in the picture --

THE PRESIDENT: No, I mean by caption or any other way, where do they come from ?

MR. DODD: Well, I assume them to be all captured documents. Oh, I see how -- there are affidavits attached to each one which explain their source.

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Here, this first one, there is a man by the name of Francois Boix, who says that he is a photographer and was interned at Mauthausen, and so on, and he attests that this photograph was taken, and so forth. I think that is sufficient -- I assume it is -- to identify the picture. I believe that each one of them has a similar statement.

Now the next one is F-896, which becomes USA-905. The back of the original bears an affidavit by Francois Boix.

The next one is F-897, which becomes USA-906. This, as well, bears the affidavit of Francois Boix and shows Kaltenbrunner and Himmler and other SS officials.

Then, lastly, Document F-895, which becomes USA -907, and this picture we particularly call to the Tribunal's attention. It, as well, bears the certificate of Francois Boix. Kaltenbrunner is there in the second row, Himmler and Hitler in the immediate center between Kaltenbrunner and, apparently, Martin Bormann, taken at a concentration camp it appears from the picture of the unmates on the left side.

Then we wish to offer a very short affidavit, which is 4033-PS and we offer as USA-908. It is the deposition of Oswald Pohl, P-o-h-l, dated the 28th of May, 1946. The substance of the affidavit reads as follows:"I can say with absolute certainty that on the occasion of a duty call at Mauthausen --"

THE PRESIDENT: One moment. Was Pohl called as a witness ?

MR. DODD: No, sir, he was not called. That was Puhl, P-u-h-l. The names are similar.

"-- I saw and spoke to SS Obergruppenfuehrer Kaltenbrunner there at the officers'mess on the righthand side of the camp entrance either in the autumn of 1943 or the spring of 1944. I took lunch with him there at the mess table."

And then another affidavit, 4032-PS, which becomes USA-909. I think it is unnecessary to read this; it has been translated. It is the deposition of one Karl Reif, R-e-i-f, in which he states that he saw Kaltenbrunner either in May or June about midday in 1942 in the camp at Mauthausen.

That is all we have to offer, Mr. President.

THE PRESIDENT : Do the other members of the Prosecution wish to offer any other evidence ?

Then we can pass to the evidence to be called on behalf of Bormann. Dr. Bergold, will you call the witness you wish to call, Kempka.

DR. BERGOLD (Counsel for the defendant Bormann) : Gentlemen of the Tribunal, I shall call the witness Kempka.

ERICH KEMPKA, a witness, took the stand and testified as follows :

BY THE PRESIDENT :

Q Will you state your full name, please.

A My name is Erich Kempka.

Q Will you repeat this oath after me :

I swear by God, the Almighty and Omnicient, that I will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath.)

THE PRESIDENT : You may sit down.

DIRECT EXAMINATION

BY DR. BERGOLD :

Q Witness, in what way were you working near Hitler during the war ?

A During the war I worked for Adolf Hitler as his personal driver.

Q Did you meet Martin Bormann in that capacity ?

A Yes, I met Reichsleiter Martin Bormann in my capacity as driver, when he became my indirect superior.

Q Mr. Witness, on what day did you see the defendant Martin Bormann for the last time ?

A During the night from the 1st of May to the 2nd of May 1945, I saw the former Reichsleiter Martin Bormann near the Friedrichstrasse Station at the Weidendamm Bridge. The former Reichsleiter Bormann asked me what the general position war near the Friedrichstrasse Station, and I told him --

THE PRESIDENT (Interposing) : You are going too fast. He asked you what ?

THE WITNESS : He asked me what the position was and whether one could get through near the Friedrichstrasse Station. I told him that it was practically impossible, since there was too much of a defensive action being fought. Then he went on to ask whether it might be possible to do so with armored vehicles, and I told him that it was all a question of trying it.

Then, a few tanks and a few SDW cars came along, and small groups began

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to cling to them, and the armored vehicles penetrated the anti-tank trap after the vehicle at the head had got through. Bormann was walking approximately in the middle of the column on the lefthand side. Suddenly that was a direct hit, presumably by a Bazooka shell, and the tank next to which Bormann was walking was blown up. On the very side where Bormann was walking, there was a bright flame.

THE PRESIDENT : You are still going much too fast. The last thing I heard you say was that Bormann was walking in the middle of the column. Is that right ?

THE WITNESS : Yes, he was walking on the lefthand side, center of the tanks.

Then, after the tank had got 40 to 50 meters through the anti-tank trap, the tank was hit, presumably by a Bazooka shell fired from a window. The tank disintegrated at the very spot where Martin Bormann was walking.

By having a person thrown against me who had been walking ahead -- I think it was Standartenfuehrer Dr. Stumpfecker -- I was thrown aside and I became unconscious. When I came to, I couldn't see anything at all since this blinding flash had blinded me. I then crawled back as far as the tank trap, and since then I have not seen Martin Bormann again.

BY DR. BERGOLD :

Q Witness, did you see Martin Bormann collapse on this occasion in the flame ?

A Yes, there was a movement; there was a sort of collapse. You might call it a flying away.

Q Was that explosion so forceful that according to your observation Martin Bormann must have died on that occasion ?

A Yes, I assumed for certain that the strength of the explosion was such that he lost his life.

Q How was Martin Bormann dressed on that occasion ?

A Martin Bormann was wearing a leather coat, and SS leader's cap, and the insignia of an SS Obergruppenfueher.

Q Do you therefore believe that if he had been found wounded on that occasion he would have been identified, because of his clothes, as being one of the leading men of the movement ?

A Yes.

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Q You have said that either beside or ahead of Martin Bormann another man was walking, a man named Naumann of the Propaganda Ministry.

A Yes, it was the former Secretary of State, Dr. Naumann.

Q Was he near the explosion ?

A No, he was about one or two meters ahead of Martin Bormann.

Q Have you subsequently ever seen Secretary of State Naumann ?

A No, I haven't seen him again either. The same applies to Standartenfuehrer Dr. Stumpfecker whom I haven't seen either.

Q On that day you crawled back, didn't you ?

A Yes.

Q Didn't anyone follow you ?

A Yes. Always, when you passed behind that anti-tank trap, you would run into defensive fire, and a few would remain lying on the spot and a few went back, but those who were with that tank I have never seen again.

DR. BERGOLD : Gentlemen of the Tribunal, I have no further questions to this witness.

MR. DODD : I have no questions, Mr. President.

THE PRESIDENT : Do the defense counsel want to ask any questions ?

BY THE PRESIDENT :

Q How many tanks were there in this column ?

A That I cannot say at the moment -- possibly two or three. There may have been fewer, but there were more SPW's.

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armored rifle protection cars.

Q Howmany were there of them?

A More and more came up, and then some of them went away again. They tried to get through at that point. Possibly one or two tried. The others fell back when that tank was blown up.

Q Where did the column start from?

A That I wouldn't know. They were there quite suddenly. I presume that there were armored cars which were in the middle of the town, and which were looking for a gap through which they could get out.

Q When you say they were there suddenly, where do you mean they were? Where did they pick you up?

A I wasn't picked up. I left the Reich --

Q Well, where did they join you? Where did you first see them?

A Near the Weidendamm Bridge, near the Friedrichstrasse Station. There they appeared during the night.

Q Where was it that Bormann first asked you whether it would be possible to get through?

A That was at the tank block behind the Friedrichstrasse Station near the Weidendamm Bridge.

Q Do you mean that you met him in the street?

A Yes. When moving out of the Reich Chancellery, Martin Bormann wasn't present, and then he appeared near the bridge at between 2 and 3 in the morning.

Q You met him there just by chance, do you mean?

A I met him only by chance, yes.

Q Was anybody with him?

A Secretary of State Dr. Naumann from the Ministry of Propaganda was with him, and also Dr. Stumpfecker who had been the last doctor who was with the Fuehrer.

Q How far were they from the Reich Chancellery?

A From the Reich Chancellery to Friedrichstrasse Station is approximately a quarter of an hour's way under normal circumstances.

Q And then you saw some tanks and some other armored vehicles coming

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along, is that right?

A Yes.

Q German tanks and German armored vehicles?

A Yes, German tanks and German armored vehicles.

Q Did you have any conversation with the drivers of them?

A No, I didn't talk to the drivers. I think the former Secretary of State Dr. Naumann did.

Q And then you didn't get into the tanks or the armored vehicles?

A No, we didn't, neither Secretary of State Dr. Naumann nor Reichsleiter Bormann.

Q You just walked along?

A Just walked along, yes.

Q And where were you with reference to Bormann?

A I was behind the tanks, approximately on the lefthand side behind the tanks.

Q How far from Bormann?

A Possibly that was three to four meters.

Q And then some missile struck the tank, is that right?

A No, I believe a shot came from a baz ooka which was shot from a window and that is how the tank was hit.

Q And then you saw a flash and you became unconscious?

A Yes, I suddenly saw a flash and in the fraction of a second I also saw how Reichsleiter Bormann and Secretary of State Naumann both made a movement of collapse and of breaking away and I also was thrown aside at that same instant and then subsequently lost consciousness.

Q And then you crept away?

A When I came back to consciousness I could not see and I crawled away. I crawled until I hit the tank block, the tank trap with my head.

Q Where did you go to that night?

A Then I waited there for a while and then I said farewell to my drivers, some of whom were still there and then I remained amongst the debris and then the following day I left Berlin.

Q Where were you captured?

A I was captured at Berchtesgaden.

BY THE BRIBUNAL (Mr. Biddle):

Q How near were you to the tank when it exploded?

A I estimate three to four meters.

Q And how near was Bormann to the tank when it exploded?

A I assume that he was hanging on to it with one hand.

Q Well, you say you assume. Did you see him or did you now see him?

A I did not see him on the tank actually. He followed the tank also -- I had done the same thing. I had held on to the tank at the back.

Q Did you see Bormann trying to get on the tank just before the explosion?

A No, I did not see that. I did not see an effort on Bormann's part which would hint that he wanted to climb on board the tank.

Q How long before the explosion were you looking at Bormann?

A All this happened in a very brief period. When I was st...

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still talking to Bormann the tanks arrived and subsequently it went through the tank trap right away and then about 40 meters afterwards it was when the tank was hit.

Q What do you call a brief period?

A Well, during the conversation that lasted only for a few minutes possibly.

Q And how long between the conversation and the explosion?

A I cannot tell you the time but surely that was not a quarter of an hour, it was not half an hour which had passed.

Q Had you been in the Chancellory just before this?

A In the evening towards 9 o'clock I left the Reichs-chancellory.

Q Have you ever told this story to anyone else?

A I have been interrogated several times because of that and I have already made the same statement.

Q And who took your interrogation, some officers?

A Yes.

Q With what army, what nations?

A I have been interrogated by various officers of the American Army, the first time at Berchtesgaden, the second time at Freising and the third time at Oberursel.

MR. DODD: As a result of the Court's inquiry there are one or two questions that occur to me that I think perhaps should be brought out which I would like to ask the witness, if I may.

CROSS-EXAMINATION

BY MR. DODD:

Q You were with Bormann were you, at 9 o'clock in the bunker in the Reichschancellory on that night?

A Yes. Towards 9 o'clock I saw him for the last time when I said farewell to Dr. Goebbels. Then I met Martin Bormann down-stairs in the cellar and then I saw him again during the night between 2 and 3 o'clock in the morning.

Q Well, maybe you said so but I did not get it if you did. Where did you see him at 2 or 3 in the morning prior to the time that you started to walk with him along with the tank?

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A Before that I saw him at the Friedrich Strasse Station at between two and three in the morning and before that for the last time I had seen him at 21 hours at the Reichschancellory.

Q Well I know you did. But did not you and Bormann have any conversation as to how you were to get out of Berlin when you left the Reichschancellory bunker about 9 o'clock that night?

A I had received my orders from the former Brigadefuehrer Milunke. I was not getting direct orders from Reichsleiter Bormann anymore.

Q I did not ask you if you got an order from him. I asked if you and Bormann and whoever else was there had not discussed how you would get out of Berlin. It was 9 o'clock at night and the situation was getting pretty desperate. Did you not talk about how you would get out that night? There were not many there.

A There were four to five hundred people who were still in the Reichschancellory and these four or five hundred people had been subdivided into groups. These groups were leaving the Chancellory one by one, one group after another.

Q I know there may have been that many in the Chancellory. I am talking about that bunker you were in. You testified about this before have you not? You told people that you knew Hitler was dead as well as Bormann. You must have been in the bunker if you know that.

A Yes, I have already testified to that effect.

Q Well, what I want to find out is whether or not you and Bormann and whoever was left in that bunker talked about leaving Berlin that night before you left the bunker?

A I had not spoken to Reichsleiter Bormann anymore about it at the time. We only had marching orders saying if we should succeed we should report to Fehrbellin where there was a fighting group which we were to join.

Q You are the only man who has been able to testify that Hitler is dead and the only one who has been able to testify that

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Bormann is dead, is that so, so far as you know?

A That Hitler is dead is something I can say. I can say that he died on the 30th of April in the afternoon between two and three o'clock.

Q I know but you did not see him die either, did you?

A No, I did not see him die.

Q And you told the interrogators that you believe you carried his body out of the bunker and set it on fire. Aren't you the man who has said that?

A I carried Adolf Hitler's wife out and I saw Adolf Hitler himself rolled in a blanket.

Q Did you actually see Hitler?

A Not himself any more. The blanket in which he was rolled was a little short and only his legs were hanging out.

MR. DODD: I do not think I will inquire further, Mr. President.

DR. BERGOLD: I have no further questions either.

THE PRESIDENT: The witness can retire.

DR. BERGOLD: Gentlemen of the Tribunal, then there is witness Walkenhorst who is also present. It appears to me that there is a misunderstanding between the High Tribunal and myself. I had stated in the afternoon that apart from witness Kempka I did not wish to call another witness and I therefore forego the calling of witness Walkenhorst expressly.

THE PRESIDENT: What did you ask for him to prove in the first instance?

DR. BERGOLD: Well, originally --

THE PRESIDENT: We have got your application.

DR. BERGOLD: But after talking to witness Klopfer, who I did not wish to call either, I shall also forego the witness Walkenhorst because he does not appear to me to be competent enough to testify as to what I wanted him to testify about.

My entire taking of evidence therefore is now at an end except for two documents which the Tribunal have already granted

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me, namely the decree for the stopping of measures against the churches and Bormann's decree from 1944, with which he forbade members of his chancellory from being members of the SD. Those two documents I have not yet received and when I shall have received them I shall submit them.

THE PRESIDENT: Very well.

Dr. Servatius, you have some question or affidavit you wanted to get from this witness Walkenhorst, did you not?

DR. SERVATIUS (Counsel for defendant Sauckel): I have an affidavit from witness Walkenhorst which deals briefly with the question of the telephone conversation which Sauckel had with reference to the clearing on that occasion of the camp at Buchenwald. He has been accused of having ordered the evacuation of the camp when the American Army approached. Now this witness Walkenhorst has accidently been found and it transpires that peculiarly enough he was the man with whom Sauckel had his conversation. In an affidavit he has confirmed that Sauckel has demanded that the camp should be handed over in an orderly way and that is really all I wanted to ask of this witness.

I can submit it to you in the form of an affidavit.

THE PRESIDENT: Do the Prosecution want the man called or will the affidavit do?

DR. SERVATIUS: I am satisfied with handing over the affidavit.

COLONEL PHILLIMORE: As far as the Prosecution are concerned, an affidavit would suffice.

THE PRESIDENT: Very well.

DR. SERVATIUS: In that case I submit the affidavit and I shall state its exhibit number together with my list.

THE PRESIDENT: There is one other matter which I wish to draw the attention of the defendants' counsel to.

The Tribunal have been informed as to the length of the speeches of the defendants' counsel which have been placed before the translation division for translation and in the case of the defendant Keitel and in the case of the defendant Jodl the speeches which seem to have been put into the translation division seem to

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be very much longer than the Tribunal had anticipated and quite impossible to be spoken in one day.

Would counsel for the defendant Keitel explain to the Tribunal why that is and what steps he has taken to shorten his speech?

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DR. NELTE: Mr. President, I have sent a letter to the Tribunal today, which I believe has not yet reached you. In that letter I made the request that in the case of the defendant Keitel I should be permitted to exceed the length of time which hasbeen limited to one day for the big cases. When, following a request of the Tribunal, I stated that the time which my final speech would take, I had my manuscript completed. That manuscript would have taken about seven hours. In that form, I have given that manuscript to the Translating Division because it was too late to alter it. I submitted the first part last Wednesday and the second part, in accordance with my promises, I submitted on Saturday morning.

If the Tribunal, with reference to the decision to allow only one day -- that is, five and a half consecutive hours of speech -- would consider th the possible maximum and would not wish to depart from that ruling in any case, not even in the case of defendant Keitel who has been particularly seriously implicated, then I would be forced to eliminate certain passages from the manuscript and to submit them merely in writing. Whether this is a possibility I should again like to leave to the decision of the Tribunal.

THE PRESIDENT: Well, Dr. Nelte, the Tribunal takes note of the fact that when you were asked how long your speech would take, you said, I think, seven hours. Is that right?

DR. NELTE: Yes.

THE PRESIDENT: Well, according to the estimate which has been given to the Tribunal, the speech which you submitted for translation would take about thirteen hours. That is nearly double as long as you yourself said, and it is almost exactly double the length of the speech that has been submitted for the defendant Ribbentrop, whose case is almost as extensive, if not quite as extensive, and it appears to the Tribunal to be out of all reason to put in a speech which will probably take nearly double the time that you yourself stated. The speech you put in is more than double the length of the speech that has been put in on behalf of the defendant Goering.

DR. NELTE: Naturally, I am unable to know the point of view of Counsel for Reich Marshal Goering or Foreign Minister von Ribbentrop. I can not know the principles that guided them. I can only be directed by my

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conscience and sense of duty.

THE PRESIDENT: Perhaps that is a matter of comparison, it is true, but you said seven hours yourself, and you now put in a speech which will probably take thirteen.

DR. NELTE: I believe, Mr. President, that I shall make that speech in seven hours, if I have seven hours for speaking.

THE PRESIDENT: Well, the Tribunal has given this matter a very full consideration, as you are aware, and they have said that every speech must be made in one day, and that will take up some considerable time for the whole of the defendants to make their speeches.

DR. NELTE: Mr. President, I accept a decision. If I am confined to one day, then I shall have to leave out certain parts from my manuscript, but in that case, may I make the request that the remainder be taken cognizance of by the Tribunal, because everything that I have included in my manuscript is the minimum of what I consider necessary in so large a case.

THE PRESIDENT: Dr. Nelte, we will consider that application for you to be allowed to put in the other passages in your speech, and we will let Defendants' Counsel know what our decision is upon that.

Dr. Siemers, the Tribunal has now received a full report showing the immense trouble taken by the Secretariat to find or try to find the witness Schulze, Otto Schulze, for you since you first asked for him in February of this year, and the Tribunal would like to know what steps you have taken in the meantime to try and find him.

DR. SIEMERS: I believe, Mr. President, that there was no need to find the witness because, actually, it was known that he was living in Hamburg, Blankenese, and because, in my opinion, he is still living there. That is the address which I have repeatedly given the General Secretariat.

THE PRESIDENT: Well, you know what the General Secretary's office were doing about the matter. You knew they were unable to find him at the address. You knew that they had sent the interrogatories to Washington because they were told he had been taken over there, and we are told that you have been in Hamburg yourself.

DR. SIEMERS: That the interrogatory was sent to Hamburg is something

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which I have known only since last Friday after my return from Hamburg. I personally did not anticipate that such a mistake or such a misunderstanding could arise. Unfortunately, I do not know how it has arisen. Far be it from me to make any kind of accusation. I have merely requested that if the document were received, then the Tribunal would agree to receive it in evidence later. Unfortunately, I can not submit it today. I have immediately informed the General Secretariat of the address again, and I do not know any more than that address in Hamburg either. In my opinion, Admiral Schulze is not in captivity, and it is possible that during my absence some misunderstanding has occurred, but I myself have only heard that last Friday.

THE PRESIDENT: Well, I can not understand why, during all these months that you have been here and have had full opportunity of seeing the General Secretary and have received all the assistance which you and all the other Defendants' Counsel have received from the General Secretariat, that you should not have helped the General Secretary better to find this witness. That is all.

We will adjourn now.

(A recess was taken until 4 July 1946, at 1000 hours.)